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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in the Republic of Equatorial Guinea submitted by the Special Representative of the Commission, Mr. Gustavo Gallón, pursuant to Commission on Human Rights resolution 2001/22

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Executive summary and introduction

The human rights situation in Equatorial Guinea has been a matter of concern to the Commission on Human Rights for longer than that of any other country. Consideration began in 1976 under the confidential procedure and, since 1979, has been conducted in public proceedings, in accordance with which Mr. Fernando Volio Jiménez (Costa Rica) was appointed Special Rapporteur the same year. His mandate was renewed each year until 1993, with the title of Independent Expert. He was succeeded as Special Rapporteur in 1993 by Mr. Alejandro Artucio (Uruguay), whose mandate was also renewed each year until 1999, when Mr. Gustavo Gallón (Colombia) was appointed Special Representative with a dual mandate to monitor both the human rights situation and the technical assistance provided to Equatorial Guinea. This mandate was renewed in 2000 and extended in 2001.

In his two preceding reports, the Special Representative noted, as had his two distinguished predecessors over a period of 20 years, that the grave human rights situation had been continuing for over three decades and even dated back to the colonial era, before the country obtained independence from Spain in 1968. The problem can be summarized as the absence of any genuine rule of law under what is actually a single-party regime (although in formal terms multiparty politics is permitted) functioning with the support of a military whose powers are no different from those of the police and which even exercises jurisdiction over civilians. Following the overthrow of Francisco Macías' dictatorship in 1979 by his nephew, then a lieutenant-colonel and Minister of Defence and now President, Teodoro Obiang Nguema, the Government proclaimed itself democratically based and accordingly established a number of democratic institutions; however, the population lacks any legal safeguards and any person can be deprived of his liberty at any moment and has no effective remedy to impede, rectify or repair that situation. More than 65 per cent of the population lives in extreme poverty, a situation that is not improving despite the discovery and exploitation of significant oil deposits since 1995; indeed, that fact may be helping to exacerbate social differences.

The Special Representative submits herewith his third report to the Commission. It has been prepared on the basis of information gathered during his visit to Equatorial Guinea between 4 and 18 November 2001, in pursuance of Commission resolution 2001/22, which renewed his dual mandate to examine the human rights situation and monitor the technical assistance provided to Equatorial Guinea in order to verify that it supports its national plan of action on human rights; and which added a third component to that mandate, namely, to assist the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Equatorial Guinea, by holding a dialogue with the Government, in establishing a programme of technical assistance in the field of human rights.

With regard to the first component of this mandate, the Special Representative found during his visit that the Government has taken steps to begin implementing directly, and without the need for external technical assistance, some of the recommendations made by the Commission over the last 23 years, such as improving the sanitary conditions and physical premises of some detention centres, making arrangements for legislation to be published in an official gazette and deciding not to prosecute persons in possession of foreign newspapers. During the visit, the Government also informed the Special Representative of its decision to accede by March 2002 to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, in compliance with recommendations made repeatedly by the Commission; and of its willingness to take the necessary steps, again by March 2002, to strengthen the mechanisms enforcing the prohibition on arbitrary detentions and preventing women or their family members from being deprived of their liberty for not returning a dowry in the event of divorce, and to submit to Congress a bill to ensure that civilians are not tried by military courts. If these steps are taken and these undertakings fulfilled, they could significantly help to improve the grave human rights situation that persists in Equatorial Guinea, as could be seen during the visit and as described in this report.

With regard to the second component of his mandate, the Special Representative noted that several technical assistance projects have been agreed with Equatorial Guinea and that some of these are already being implemented by such States as Spain and France or by private companies from the United States and Spain, while others are shortly to be launched by organizations such as the United Nations Development Programme (UNDP) and the European Commission. Projects of this kind tend - some more consistently than others - to create conditions conducive to the development of a national plan of action on human rights based on some of the Commission's repeated recommendations, but in all cases their basic principles need strengthening if those efforts are to be fruitful.

With regard to the third component of his mandate, after discussions with the Government during his visit, the Special Representative recommended to OHCHR in November 2001 that a team of experts on the Convention against Torture, on judicial investigation techniques that do not involve torture and on military systems of criminal justice should be sent on a mission to support and help the Government in its undertakings to implement the recommendations made in this regard. Depending on the outcome of the mission, which it is hoped to carry out in early 2002, and the Government's willingness to implement other recommendations of the Commission, further specific projects could be organized that would pave the way for the preparation, adoption and implementation of a national plan of action on human rights.

In concluding the task entrusted to him by the Commission, the Special Representative recommends that the situation of human rights in Equatorial Guinea and any technical assistance provided should continue to be monitored in order to ensure the implementation of the recommendations repeatedly made by the Commission over the last 20 years and the reinforcement of the measures and undertakings the Government has embarked on in pursuit of that goal.

During his visits to the capital, Malabo (from 4 to 13 and 15 to 18 November), Bata (13 to 15 November) and Evinayong (14 November), the Special Representative had two meetings with the Inter-Ministerial Commission on Human Rights, a body established by the Government in 2001 to deal specifically with human rights, and also held bilateral meetings with many government representatives, with all of whom he had wide-ranging, cordial and frank discussions: the President, 10 ministers, the President of the House of Representatives of the People, who is also President of the National Human Rights Commission, and the Government Representative in Evinayong.

He also met with opposition political parties - both those that are members of the government coalition and the only legally recognized party that is not part of the coalition - and with representatives of political groupings that are not legally recognized as parties. He also interviewed individual members of civil society and detained persons.

The Special Representative also had the opportunity to meet diplomatic representatives, including the ambassadors of Cameroon, France, Nigeria and Spain, the representative of the European Commission and representatives of United Nations agencies such as the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF).

The Special Representative wishes to thank the national authorities for their support throughout his visit and their willingness to enter into dialogue, which made it possible for him to carry out his mission in accordance with the Commission's requirements. Their attitude contrasted with the marked lack of cooperation the Special Representative met from certain local authorities, especially the police station and gendarmerie in Bata.

The Special Representative was in constant contact with the Resident Representative ad interim of UNDP, Mr. Bacar Abdouroihamane, and his colleagues, to whom he extends his deepest gratitude for their firm support, which was vital to the success of the mission. He also wishes to thank the members of the delegation accompanying him, Ms. Benedetta Odorisio, a member of the staff of OHCHR, and Mr. John Bevan, a UNDP consultant, for their valuable work and diligence.

I. MONITORING OF THE HUMAN RIGHTS SITUATION

I.1. CIVIL AND POLITICAL RIGHTS

A. Right to physical freedom and integrity of the person

1. The Special Rapporteur has stated in his preceding reports that "the clearest evidence of the gravity of the human rights situation in Equatorial Guinea is the legal uncertainty with which each of its inhabitants has to live. At any moment they can be deprived of their liberty and held in inadequate detention centres, and even subjected to torture, by virtue of a simple 'order from higher authority', with no warrant or legal grounds for that order, and they have no access to an effective judicial remedy to prevent or rectify that situation" (E/CN.4/2000/40, para. 114). In his last report, he therefore repeated his recommendation that "in particular and as a matter of urgency (...), the Government should take the necessary steps to ensure the immediate and full realization of the rights to physical liberty, integrity of the person and the human dignity of detainees, including the prohibition of arrests without a warrant (except when someone is caught in the act of committing an offence) and the beating, ill-treatment or torture of persons deprived of their liberty, and that violations of such prohibitions should be suitably punished" (E/CN.4/2001/38, para. 50). The Commission emphasized this recommendation in its resolutions 2000/19, paragraph 2 (a), and 2001/22, paragraph 2 (a), and indeed such emphasis is necessary, since there has been no substantial change in this worrying situation apart from improvements to the prison buildings in Bata.

2. The Special Representative visited six detention centres on this occasion: the Malabo police station and Black Beach prison, also in Malabo; the Bata police station, gendarmerie and prison; and Evinayong prison. Notable improvements have been made to the prison buildings in Bata, where some 10 toilets and washing and shower facilities for inmates (a total of around 40 at the time of the visit) have been built since January 2001. While there is still room for further improvements in these facilities, they contrast with the insalubrious and humiliating conditions in which prisoners had been obliged to attend to their physical needs in the courtyard. The roofs in Bata prison have also been repaired, there are more beds, mattresses and space available for people, acceptable arrangements have been made to separate women and men and a suitable area has been set aside for religious worship. These improvements are along the lines of Commission recommendations that, as has repeatedly been pointed out, the Government can implement without the need for external technical assistance. The same should now be done in the remaining detention centres and, in particular, in Malabo and Bata police stations, where the sanitary arrangements for persons deprived of their liberty continue to be unhygienic and undignified. The sanitary facilities in Black Beach and Evinayong prisons are moderately acceptable and could be improved. Hygienic conditions in Bata gendarmerie are non-existent, but this is not a legally recognized place of detention.

3. Bata gendarmerie is in fact a military garrison, but it has a cell in which people are detained in violation of the most elementary humanitarian standards. It is known as the "National Gendarmerie barracks" and there, on 13 November 2001, the Special Representative met 17 detainees, crammed into a space approximately 1.5 m wide by 4 m long by 3 m high. Some of them said they had been in detention for as long as four weeks and all said they were suffering from hunger. Among them were four children aged between 13 and 17. The only

sanitation was a plastic bottle by the door, which everyone had to use to urinate. The lieutenant-colonel in charge could produce no warrant for the detention of any of these people. In a list drawn up on the spot by the duty officer at the Special Representative's request - in the absence of even the most elementary prisoner registration system - all were described as being "at the disposal" of the military authorities. The list showed one of the four minors as still in detention, despite the fact that the Special Representative had reminded the officer of the elementary obligation to separate children from adults and not treat them harshly, in accordance with the Convention on the Rights of the Child. The other three children were released, on condition that they reported to the gendarmerie the following day.

4. The Special Representative also returned the following day and found two of the detainees in an appalling physical condition and showing clear signs of torture, after having reportedly been hung up by their wrists during the night. In the lieutenant-colonel's absence, a corporal was in charge and the Special Representative asked him whether it was true that they had been tortured during the night. His reply was spontaneous and revealing: "What do you do in your country to get thieves to confess?"

5. The Special Representative also asked the corporal the exact meaning of the charge of "bringing in unauthorized propaganda", which was noted against the names of two other detainees on the list. They were a Nigerian and a Ghanaian, the only two foreigners listed. His reply was not coherent. Some days later, the Minister of Justice told the Special Representative that they had been detained for selling T-shirts with a picture of Osama bin Laden. The Special Representative asked the Minister whether there was any legislation, old or new, defining the sale of T-shirts with such a picture as an offence. The Special Representative understood from the Minister's response that there was no such legislation.

6. As well as being a favoured place for arbitrary detention, torture and violations of the rights of children, the National Gendarmerie "barracks" in Bata is also a semi-clandestine detention centre. It was discovered almost by chance: the Special Representative and his colleagues were being taken by the government representative to the Bata prison facilities, which are also on the gendarmerie premises, when he caught sight of some of the detainees' hands through the bars of the cell, around 50 m. away. The Special Representative was aware that there was a detention centre somewhere in the gendarmerie, since he had been told as much by a number of victims during his first visit to the country in 1999 and his distinguished predecessors had referred to it in their reports, but he did not know the cell's exact location in the gendarmerie. During his 1999 visit, he repeatedly requested the government representatives coordinating his itinerary in Bata to take him there, but he was continually given excuses, as he indicated in his report (E/CN.4/2000/40, para. 58). On seeing the hands through the bars on 13 November 2001, the Special Representative decided to go and see whether there were in fact detainees behind the bars, as all the signs seemed to indicate, before going on to Bata prison. The officials coordinating his visit attempted to prevent him from doing so, saying that they were not authorized to take him there, as it was a military barracks. The appalling scene that met their eyes when they arrived at the cell made them give up, albeit reluctantly, trying to prevent the Special Representative from finding out about the detention centre. This military prison, semi-clandestine and inhuman, should not continue to be used for detaining civilians or indeed anyone else.

7. While the remaining detention centres are not military prisons in the strict sense, like the gendarmerie barracks, they are nevertheless under barely concealed military control. On his visit to Bata prison, for example, the Special Representative was accompanied by the prison governor (who was at all times extremely courteous and whom the Special Representative had met on his previous visit) and by another person in civilian clothes who introduced himself as the "prison administrator". The following day, when the Special Representative returned to the gendarmerie, he saw this same person walking around the barracks in a commanding manner and impeccably dressed in the uniform of a military captain, which he admitted was indeed his rank. Similarly, at Black Beach prison in Malabo, the Special Representative was courteously met by the prison administrator, who was reported by several prisoners to be a very humane person. A few minutes later, an official in a soldier's uniform appeared, introducing himself as the military commander of the area and, stating that the prison was under his jurisdiction, he exercised his right to be present for the whole of the Special Representative's visit to the prison, with the exception of the individual interviews with inmates, which were conducted in private. At the Bata police station, which is a pre-trial detention centre, the civilian official conducting the visit, who introduced himself as the superintendent, was unable to give any coherent answer to the Special Representative's requests for the most basic information and was constantly accompanied by a military commander, who was clearly the person in charge. As to the Malabo police station, it is administered as a department of the Ministry of Security, which is in charge of the police and the Army, while Evinayong prison is administered by an army colonel and guarded by military guards. The militarization of detention centres is nothing new in Equatorial Guinea and is not unconnected with the militarization of other areas of life in that country, a situation which urgently needs correcting, as the earlier Special Rapporteurs, and this Special Representative, have recommended time and again.

8. The registers of admission and release of those detained in the prisons and police stations visited are poorly maintained. There are no registers at all in the gendarmerie. Such a shortcoming is a threat to personal freedom and the life and integrity of individuals. It is essential to draw up a list of all persons who are effectively detained at any given moment and to keep a strict record of the date and time at which any person deprived of his liberty is admitted to a detention centre, transferred to another centre or released, together with a clear indication of the judicial authority for each act.

9. Within these inadequate registers, the Special Representative found, as he had during his 1999 visit, cases of people who had clearly been detained in police stations without a court order (in addition to all those held in the cell in the Bata gendarmerie, as mentioned above). One person in the Bata police station, for example, had been detained "on the orders of a superior" on 7 November; another had been detained on the same date "by order of the Deputy Director of National Security"; while a third had been detained on 11 November "by order of the Lieutenant-Colonel, Commander of the gendarmerie". The superintendent was unable to explain why these people had been detained by order of a military rather than a judicial authority. He simply said, with regard to the third case, that "the lieutenant-colonel is the investigator in this case". At the Malabo police station, too, the list for 8 November contained the names of four people held "by order of the bosses" and another held "by order of His Excellency the Governor".

10. Not only were there people who had been detained without a court order, but also people who had been released without a court order. In Bata prison, for example, order No 2111, by which the investigating judge in the court of first instance had committed an individual to pre-trial detention on 25 September 2001, was found to have been annotated by hand and duly signed, as follows: "Released by order of the Inspector-General of the Armed Forces. 25 September 2001". This is a clear example of the arbitrary use of power.

11. The incomplete, disorganized lists the Special Representative was able to examine contained the names of several women deprived of their liberty "for failure to pay their dowry". Five of these were in pre-trial detention in Bata prison: one had been there since 23 January 2001; three since 9 February 2001; and one since 4 April 2001. One had been in prison for at least 78 days, as she had been detained on 9 February and was still on the list on 27 April. Another woman at the Bata police station was listed on 9 and 10 November 2001, three days before the Special Representative's visit, as detained "for failure to pay 470,000 CFA francs". As repeatedly stated in preceding reports, such detentions for civil debt violate article 11 of the International Covenant on Civil and Political Rights moreover, are, an affront to women's dignity.

12. Other detentions that violated women's rights were also discovered during these visits, relating, for example, to "abandonment of the home" or the requirement to "certify unmarried status". The Special Representative saw a warrant dated 2 February 2001 at Bata prison, by which the Bata district judge had ordered "the pre-trial detention of Ms. (...), the legal spouse of Mr. (...), for abandonment of the marital home". Another, similar warrant relating to another detained woman was dated 27 October 2000. A third warrant, dated 1 November 2000, ordered the "pre-trial detention of a national of Equatorial Guinea answering to the name of Ms. (...) until such time as she can prove her unmarried status by producing the relevant certificate of divorce".

13. Three women named in another warrant dated 27 October 2000 were in Bata prison for adultery, which seems to be an offence in Equatorial Guinea. A man in the Bata police station was found to have been detained for adultery on 11 and 12 November 2001, the day before the Special Representative's visit. There was no warrant for his detention. The superintendent attempted to justify it on the grounds that the man had been reported and had been detained by police. He was unable to say, however, whether the alleged offender had been caught in the act of committing an offence, which would mean that no warrant was necessary.

14. Other acts which it is doubtful can be described as offences also lead to deprivation of liberty. One individual on the Bata police station list of detainees for 31 October 2001 had been detained on 27 October 2001 for "insulting the First Lady and stealing a car". The Special Representative had already come across cases of detention for alleged insults to authorities during his 1999 visit. On this occasion, in November 2001, the superintendent was unable to produce any warrant justifying the arrest or to explain the connection between the charges of insults and car theft, much less to say which judicial authority had ordered the detainee's release.

15. The visits to the detention centres confirmed that deprivation of liberty on grounds of witchcraft, sorcery or black magic ("kong" in the Fang language; "mokuku" in the Ndowe language), or associated acts, is commonplace. Two women in Bata prison were found to

have been detained, by order of the Appeals Court, "for the offence of possession of poison". One man had been serving a sentence there for four years after having been convicted of murdering his aunt by sorcery. In his words, "My aunt put spells on my children and they began to die. So I took her to the healers and she died". The Special Representative interviewed another person detained on similar charges in Evinayong prison, who had been deprived of his liberty for 44 days. While it cannot be denied that sorcery is practised in Equatorial Guinea and is used to cause harm, nevertheless, except in cases of homicide by poisoning or some other direct physical act, it is doubtful whether any judicial authority could rationally establish a causal link between an act of sorcery and the alleged harm and thus assign legal responsibility. Indeed, charges of this kind help to conceal abuses of power under what appear to be legal decisions, but lack any guarantee of due process. It is important to clarify what traditional justice consists in and how it relates to the formal justice system.

16. The Special Representative met a number of special prisoners in the Malabo police station who had been detained "on behalf of" a multinational company, as the superintendent put it. There was no warrant for their deprivation of liberty and they had not been detained "on superior orders"; they had been held in the police station for several days in an enclosure in the prisoners' yard while the company investigated the loss of some money in which they had apparently been involved. There were five or six people, one of them a woman and the majority of them foreigners from neighbouring countries. The Special Representative mentioned the situation to the Minister of Labour, who was quite convinced that it must be a misunderstanding on the part of the Special Representative. Yet the superintendent said these prisoners were under a special detention regime, as was shown by the fact that they were not sent to work outside the police station like the other prisoners.

17. As the Special Representative and his distinguished predecessors have mentioned in their reports, persons deprived of their liberty in the various detention centres are commonly subjected to forced labour. The Special Representative saw with his own eyes an order dated 23 January 2001 in Bata prison, signed by the Bata district judge, which read as follows, word for word: "I hereby request the Administrator of the public prison of this city to order seven prisoners to appear or, rather, to form a party to clean the building housing the Ministry of Justice and Worship, the District Court and the Bata District Court tomorrow, 24 January 2001, in anticipation of a visit to be made there shortly". The files contained other documents of the same kind. At Black Beach prison, the Special Representative was informed that one of the prisoners on the list was not present because he had been "sent to the Minister Delegate of Security's house to wash dishes or something". It is common for the prisoners in Malabo, Bata and Evinayong to be taken out to mow lawns or clean the streets. As has been repeatedly pointed out in preceding reports, such work may have positive benefits for prisoners, provided the jobs are done voluntarily and decent remuneration is guaranteed, in accordance with International Labour Organization (ILO) conventions. However, current practice shows that the authorities consider it perfectly normal that the very fact that a person has been deprived of his liberty means he can be compelled to provide whatever services they decide free of charge.

18. The Special Representative met other special detainees on his visit to Evinayong prison. One of the lists of detainees provided by the prison authorities contained 10 names that were marked as "in need of brainwashing". On another list they were referred to as "mentally

deranged". At the Special Representative's request, a judicial official there explained that these were people who were being "re-educated". The Government Representative intervened to say that was completely untrue and it was all a mistake.

19. The 10 people on that list were part of a group of people belonging to the Bubi ethnic group who had been convicted of an armed attack carried out on the island of Bioko on 21 January 1998 and had been transferred from Black Beach prison to Evinayong in March 2000. Many of them had complained at being so far from their families, since they were thus deprived of support and of the food their families used to bring to the prison on the island, and many of them therefore wished to return.

20. Another special detainee the Special Representative met in Black Beach prison is kept permanently manacled. He can move around his cell, but is unable to move his arms freely and one day when cooking his food he burned his hands severely; the burns are still visible. He received no medical attention and tried to treat himself. He is serving a sentence for murder and has escaped from prison on a number of occasions. The authorities claim he must be kept manacled, for he has the power to turn himself into a snake and would otherwise escape from prison again as he has done in the past. No doubt this prisoner has indeed shown a remarkable ability to escape from prison, but clearly other ways must be found to prevent that happening, which do not violate, as this does, the Standard Minimum Rules for the Treatment of Prisoners and related provisions adopted by the Economic and Social Council and the General Assembly of the United Nations.

21. The food in these detention centres is inadequate. Efforts are being made in Black Beach, Bata and Evinayong prisons to improve the prisoners' monthly ration of, among other things, rice, oil, sardines and soap. But, despite such efforts, the rations are meagre and detainees cannot obtain a reasonable amount of food without assistance from their families. Greater efforts need to be made in this regard.

22. On 30 December 2000, to mark the third millennium, persons deprived of their liberty were granted pardons or commutations of sentences, under Presidential Decree No. 98/2000. Several of those detained in Evinayong prison expressed their gratitude at this measure, not least because it meant that older prisoners would be released who otherwise would have died in prison.

23. The Special Representative and the Special Rapporteur on the question of torture wrote to the Government on 20 September 2001 requesting information on Mr. Emilio Ribas Esara and Mr. Gregorio Bomuagasi, who were prisoners from Evinayong prison as a result of the events of 21 January 1998 and at that time in Bata Hospital awaiting a surgical operation, for which they were required to pay in advance. During his visit, the Special Representative was able to verify that his urgent appeal had been heard and that the two men had been operated on in September.

B. Right to due process (and independence of the judiciary)

24. Like his distinguished predecessors and other United Nations experts, the Special Representative has repeatedly drawn attention to the absence of an independent, qualified judiciary in Equatorial Guinea and the resulting need "to ensure that the required separation

between the executive branch and the judicial branch is achieved, to train judicial officers, to promote the prosecution of human rights violations and to restrict the jurisdiction of military courts, which should not have competence in respect of civilians" (E/CN.4/2001/38, para. 69). Nothing has changed in this regard and, because of the legal insecurity that prevails, the arbitrary detentions, inhuman treatment and torture described in the preceding section continue as if they were perfectly normal.

25. Significant changes could begin to be made if the Government were to implement the undertaking it made to the Special Representative in this regard, to the effect that the competence of military courts would be redefined in 2002 to ensure that civilians would be tried only by civilian courts and not by military tribunals.

26. It would also be a very positive development if the Government's invitation to the Special Rapporteur on the independence of judges and lawyers and to the Special Rapporteur on the question of torture, made in March 2001 and repeated in November 2001, were to be taken up.

27. A point that must be emphasized is that the independence of the judiciary must be guaranteed not only during the trial stage, but also, and most particularly, during the preliminary investigation or criminal inquiry stage. The Special Representative found clear evidence that, even on those occasions when formally carried out by a judicial authority, such enquiries are in fact conducted not by the judiciary, but by the executive branch, through its security agencies and military and police officials. At Black Beach prison, the Special Representative was shown memorandum No. 706, dated 9 November 2001 and signed by a judge in the lower court of Malabo, which addressed the Minister for National Security in the following terms: "Dear Sir: In reply to your memorandum No. 603, dated 31 October (...), requesting me to extend the period allowed for the preliminary investigation in respect of the case of the State General Treasury officials and the diversion of tax revenue, (...), I have this day decided to grant your request and allow you the time needed for the conclusion of said inquiries and their subsequent submission to this court, together with the accused".

28. Less subtle and formal is the manner in which the lieutenant-colonel in command of the Bata gendarmerie - who, as shown in the preceding section, is regarded by the superintendent of police as the natural investigator in such cases - takes charge of the inquiry without the need for a court order to that effect.

29. The Special Representative found a fresh cause for concern on his latest visit, in trials conducted by the House of Representatives of the People. These trials may in some cases inspire the lively hope that justice will be done because they involve hearings in which a representative who stands accused is held accountable by the people. However, such proceedings are not limited to trying charges against representatives alone, and not only in respect of their political responsibilities, but may involve any person on any charge; this is an encroachment on the competence of the judiciary proper, without full legal guarantees, and constitutes justice of a populist and highly unreliable nature.

30. In August 2001, the corpses of four people were found with their genitals cut off: the bodies of two older men, a boy of 10 and a newborn baby boy were reported to have been found in various parts of the mainland and on the island of Bioko. They were part of a fresh wave of "ritual" crimes, as worrying for the fact that they occurred at all as for the fact that the perpetrators have not been brought to justice.

31. During his visit to Equatorial Guinea, the Special Representative found that the authorities justified many human rights restrictions and violations by the need to deal with terrorism, as other countries have done since the tragic and reprehensible events of 11 September 2001. Paragraph 5 of this report refers to one example of this, but it is not the only case: time and again, the authorities argued that, if other, more developed countries had decided to adopt arbitrary measures to prosecute and deal with those who represent a threat to their security, all the more reason for a small, defenceless country such as Equatorial Guinea to do so. This line of argument is not acceptable, since, besides undermining international human rights obligations, it creates greater national and international insecurity, as has been shown historically. The Special Representative urges the Government and the international community to take all necessary measures to ensure that the fight against terrorism, vital though it is, provides not a pretext for arbitrary action, but the impetus for the strict implementation of international obligations to respect and protect human rights, obligations that States have assumed in the course of their arduous task of building a civilized world.

C. Right to vote and to be elected

32. A political crisis early in 2001 led to a change of Government on 23 February, after charges of corruption had been levelled at some members of the Government of Prime Minister Angel Serafín Seriche. President Teodoro Obiang appointed Mr. Cándido Muatetema Ribas the new Prime Minister.

33. On 23 and 24 February 2001, the Convergencia para la Democracia Social (CPDS), a member of the Socialist International and the only legally recognized party not belonging to the governing coalition, held in its annual conference in Bata. Participants included representatives of the Spanish Socialist Workers' Party and other international observers and financial support was provided by the Government. According to CPDS, the party has a right to such support because it is an institution of the State.

34. On 26 September 2001, the Government and the 13 legally recognized parties (the Government's party, 11 other parties belonging to the governing coalition, and one opposition party, CPDS) signed a second agreement on the evaluation of the National Pact signed in 1993. The first evaluation of the National Pact took place in 1997. The second agreement on evaluation contains seven main points, which can be summarized as follows:

(1) A review of the composition of the Supervisory and Monitoring Commission and measures to ensure its functioning;

(2) The abolition of the Commissions on Access to the Communications and Survey Media and the transfer of their functions to the Supervisory and Monitoring Commission;

(3) An undertaking to legalize applications for recognition by political parties; prevent the use of roadblocks to extort money from the population; end the requirement for exit visas to leave the country; put a stop to extrajudicial detentions; end the collection of contributions for any party through the public administration, and enforce the ban on judicial officials and members of the armed forces joining political parties;

(4) A proposal that the Government should give full powers to the Supervisory Commission to investigate violations of the Pact and strengthen the judiciary;

(5) The resolution of internal divisions within certain political parties at a special conference or by decision of the Ministry of the Interior, after having heard the opinion of the Supervisory and Monitoring Commission; simplification of procedures in order to facilitate the installation of private audiovisual media; an undertaking to end the smear campaigns conducted through the media; the prohibition of voting in public; the prohibition of demands to produce the membership card of any political party in order to obtain employment; an undertaking by all parties and the Government to comply with the law;

(6) The continuation in force of the Code of Conduct which was adopted in 1997 and governs the relationship between political parties and the Government;

(7) The postponement of the study on a draft agreement on the status of the democratic opposition; and of the classification of parties.

35. Although CPDS signed this agreement, it did so with reservations because, as its spokespersons explained to the Special Representative, the negotiations did not address important issues such as the next elections and the electoral process, the presence of international observers and elections to minor local bodies (village councils). Elections to the minor local bodies are supposed to be held every three years, but were last held in 1989.

36. While the revision of the Pact could represent an important step forward in the dialogue with the opposition, the Special Representative notes that many of the undertakings were already included in the preceding agreement. In particular, the undertaking to legalize applications for recognition submitted by political parties in accordance with the law was already part of the 1997 agreement. Although the Government considers that there are no applications outstanding, the Fuerza Demócrata Republicana (FDR) party claims that its application has not been dealt with and that its activists suffer some of the worst discrimination and persecution. Meanwhile, the Partido del Progreso, which was declared illegal in 1997 under a criminal sentence imposed on its leader - and, for no good reason, on the party itself - claims that the Government has not resolved the appeal it lodged against that decision. The clause on resolving internal problems within the parties gives cause for concern, particularly in the case of the Unión Popular (UP) party. There are also doubts about the effective implementation of the undertakings made in the agreement, given that around 20 CPDS activists who were invited to take part in a seminar in Spain in November has difficulties leaving the country because an exit visa was required, despite the fact that the abolition of exit visas had been agreed in the National Pact in 1993 and was included once again in the second agreement on evaluation.

37. The Special Representative has received the following information on the harassment of opposition activists:

(a) The CPDS party newspaper *La Verdad* reported that Mr. Venancio Elonga had decided to join the government party because of the constant harassment he and his family were subjected to and the difficulties opposition militants had to live with. In his letter of resignation from the CPDS National Executive, published in *La Verdad* issue No. 42, he said that "the party needs men who have the financial security (...) to maintain their family and who can thus be sure they will be able to fend off the physical, psychological and moral attacks of government authorities, family members and society (...). It is with the greatest regret that I inform my colleagues that I have reached rock-bottom; I do not wish to lose my life or my family, who have been virtually homeless for years".

(b) On 6 March, on his return from the CPDS national conference, Mr. Benito Oyono Biyang Ayeceba was reportedly detained by the Government Representative in Niefang for around five weeks after having been subjected to repeated pressure by the authorities to leave CPDS and join the government party.

(c) The former Mayor of Malabo, Mr. Victorino Bolekia, feeling himself persecuted by the Government following the end of his term of office as mayor in June 2000, decided to go into exile in Spain. Mr. Bolekia stated that those who oppose the government party are persecuted and he accused the Government of causing the crisis in his own party, the Alianza Democrática Progresista (ADP).

(d) In August 2001, the District President of UP, Mr. Andrés Eguang, together with his secretary and six activists, were detained in Nsok Nsomo district prison on charges of holding an illegal meeting in a public establishment. Military forces were said to have carried out the arrest without a warrant.

(e) Mr. Felipe Ondó and Mr. Guillermo Nguema, the former Ministers for Foreign Affairs and Finance, respectively, who had served a prison sentence until 13 March 2001, reported that they had been subjected to constant harassment, to the point where two taxi drivers whose services they used had been intimidated, one by fines and the other by beatings, to stop them driving for them. The Government refuses to issue a passport to Mr. Ondó. One of Mr. Nguema's brothers, Mr. Julio Ndong Elá, who was a Minister of State of the Interior, was compelled to leave public service because the Government considered he had not put sufficient pressure on his brother to make him stop his opposition activities. He says he has been obstructed and persecuted since 1998 in the economic activities he has embarked on in order to make a living.

38. In his last report, the Special Representative drew the attention of the Government and the Commission to a negotiating formula put forward by opposition parties in exile, most of them not legally recognized; the proposal was repeated in 2001 and deserves due consideration with a view to improving the country's human rights situation (E/CN.4/2001/38, paras. 28 and 29).

D. Freedom of movement

39. The removal of military roadblocks (which prevent movement within the country and are sources of abuses of the population), the elimination of the requirement of visas to leave the country and the abolition of the practice of internal exile have been recommended time and again. These three issues were the subject of discussion and agreements during the evaluation of the National Pact in September 2001, to which reference was made in the preceding section of this report.

40. The issue of the roadblocks will continue to be controversial. In the evaluation agreement, the Government agreed to undertake to adopt measures to prevent the roadblocks from being used for extortion. The Minister Delegate for Security also explained to the Special Representative that, as a result of the National Pact, roadblocks will be reduced, but not eliminated: in addition to all the roadblocks that have been set up along the land border to monitor the entry of immigrants, there will still be two fixed or military roadblocks on the continent (one in Niefang and the other in Ncué, at the intersection of Mongomo and Ebebiyín) and two more on the island of Bioko (one at kilometre 5 and another in Banapa). For the opponents, however, the roadblocks are a genuine obstacle to freedom of movement, as well as a means of keeping track of their political activities. It is therefore not reassuring that a special report submitted to the Special Representative by the Government states that "the existing roadblocks in the country (...) have the consensus of all political parties".

41. Members of opposition parties continue to be subjected to internal exile. Representatives of Fuerza Democrática Republicana (FDR) are said to be in exile in their home towns in the district of Mongomo. The agreement on the amendment of the National Pact states that "if cases of internal exile do exist, the political parties will submit them to the Government to have them stopped". The FDR party is not a recognized political force and did not sign the agreement, so there is no certainty that the internal exiles affecting it will stop.

42. As also indicated above, the Government formally undertook in the agreement to amend the National Pack immediately to stop requiring exit visas, even though it did require them in November from members of CPDS invited to take part in a seminar in Spain. The Special Representative urges the authorities to implement the provisions of the Pact so that the Government's stated intentions may become a reality.

43. On 8 March 2001, the Special Representative wrote to the Minister for Foreign Affairs and the Minister of Justice to request information on Mr. Donato Ndongo-Bidyogo, who has been living in Spain for 20 years and whose application for the renewal of his passport, which expired in 1999, was allegedly turned down. He was therefore also unable to renew his residence and work permits in Spain and could not receive social security. As the Human Rights Committee stated in its General Comment No. 27 (1999), "in order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. The issuing of passports is normally incumbent on the State of nationality of the individual. A refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere".

E. Rights to equality and self-determination (racial discrimination)

44. In earlier reports, the Special Representative and his distinguished predecessors expressed concern about the discrimination practised by the Fang, who are the majority ethnic group in the country, against the Bubi, who are the majority ethnic group on the island of Bioko, where the capital is located, and urged the Government to accede to the International Convention on the Elimination of All Forms of Racial Discrimination and to take account of General Recommendation XXI (48), adopted by the Committee on the Elimination of Racial Discrimination in 1996, so that the Bubi people's right to self-determination could be recognized without jeopardizing the right to the unity and sovereignty of the State. The Special Representative has also received complaints of discrimination against other ethnic groups in Equatorial Guinea, such as the Ndowes and the Bissios (who live along the coast of Río Muni province), the Bengas (from the islands of Corisco and Elobeyes), the Annoboneses (from the island of Annobón) and the Criollos or Fernandinos (descendants of immigrants from Sierra Leone and other neighbouring countries in past centuries).

45. During the Special Representative's visit in November 2001, the Government told him that it had decided to accede to the above-mentioned Convention in 2002, in March at the latest. The Special Representative welcomes this decision with satisfaction, hopes that it will be implemented and encourages the authorities to fulfil the obligations for which the Convention provides.

46. On 2 and 3 April 2001, a serious incident occurred in the town of Batete on the island of Bioko when a dozen or so soldiers beat up some of the inhabitants, demanding money from them, looted houses, beat up the chief and vice-chairman of the town, insulted the Government representative, calling him "Bubito" (diminutive of Bubi), imposed fines and arrested several persons, including the President of the Council.

47. The Prime Minister told the Special Representative that there had been a detailed investigation into the incident and that it had been concluded that it originated in lovers' quarrels between some of the persons involved. Quite apart from this reason, the incident is serious, the victims have not received compensation for violations of many of their rights and the persons responsible have still not been punished.

48. Several persons expressed concern that foreigners, especially from West Africa (Cameroonians, Nigerians, Gabonese, Ghanaians and Togolese), were persecuted in 2001 on the pretext of determining which ones are in the country illegally. From 22 to 26 October, there was a raid which led to over 200 arrests. There had been another in May. The Minister Delegate of Security told the Special Representative that there had been such raids, but that they were not "carried out all the time, only every six months". The Special Representative makes a special appeal to the authorities to prevent xenophobic activities from being carried out in this way.

F. Right of association (and protection of human rights defenders)

49. In its resolutions 2000/19 and 2001/22, the Commission called upon the Government to authorize, "without any undue restriction, the public registration and freedom of activity of non-governmental organizations in the field of human rights and social affairs" (paras. 8 and 7,

respectively). However, there has still been no change to Act No. 1 of 1999, which governs the operation of non-governmental organizations, but does not cover those involved in human rights work.

50. The Government maintains that this omission does not mean that human rights organizations are prohibited in Equatorial Guinea. Unfortunately, none has been authorized. There is every indication that a poorly disguised attempt is being made to prevent them from existing. A report prepared especially by the Government for the Special Representative thus states that "the country is open to non-governmental organizations in the field of human rights and other social issues, but, in order to authorize them, the Government will have to know what the project is and there will have to be transparent accounting to certify that they are actually in the service of human rights in the country".

51. On 11 May 2001, the Special Representative of the Secretary-General on human rights defenders wrote to the Government of Equatorial Guinea to request information on this question and on the situation of the human rights organizations which requested legal recognition in the past and are still waiting for the authorities to take their case into consideration. In her communication to the Government, the Special Representative expressed her concern, since these factors do not make for an open dialogue on human rights in the context of civil society.

52. The only trade union in the country is the Small Livestock Breeders' Trade Union, which was established in 2000 and is in fact an employers' association, according to the Ministry of Labour. The Government told the Special Representative that it is waging an information and awareness-raising campaign for all workers so that, in the first quarter of 2002, they may form trade unions with the Government's institutional and technical support.

G. Freedom of the press and right to information

53. Although freedom of the press is guaranteed by law, the country does not have a daily press organ. The only magazine which is published with some regularity is *La Gaceta*, which appears about once a month. The Equatorial Guinean people thus has very limited access to information.

54. The Minister of Information told the Special Representative that the entry of foreign periodicals is no longer prohibited and that passengers who bring them in when getting off a plane are no longer punished, as before. In the Minister's words, "years ago, a citizen found with a foreign periodical would go to prison but, now, the Government's attitude has put a stop to this, even though no one ordered it". During the visit, it was found that at least one shop in the capital was selling Spanish periodicals left behind in aeroplanes. Although this opening up is a positive sign, it cannot meet the country's demand for foreign publications, since no organization in the country systematically imports them - a task that could be encouraged by the Government. The Special Representative asked the Minister when people had stopped being arrested for bringing in newspapers. He replied: "I cannot say when or how long it will last".

55. The Minister showed the Special Representative decisions No. 06 and No. 07 of 20 September 1999, which authorized the operation of the newspapers, *La Opinión* and *El Tiempo*, respectively. The Minister confirmed that, as stated in preceding reports of the

Special Representative and his distinguished predecessor, there had indeed been some undue delays in the authorization for the operation of these two newspapers: "When I came in, I found applications which had gone unprocessed for years, such as that of *El Tiempo*. We authorized it in one morning, without asking anyone, since the rules are there and no one in the Government told us anything".

56. The Minister also told the Special Representative that his Office was analysing the application submitted in April 2001 for the legalization of a new periodical entitled "Liberación". After he left the country, the Special Representative learned that the application had been rejected because its name would imply attacks on democratic principles. Article 32 of Act No. 13/1992 on freedom of the press and freedom to impart information does not provide for refusals based on the name of the press organ in question.

57. It was reported to the Special Representatives that, on 21 February 2001, the mayor of Malabo, Mr. Gabriel Mba Bela, ordered the immediate closure of the headquarters of the Press Association of Equatorial Guinea (ASOPGE) "until further notice". The mayor did not explain his decision.

58. On 6 June 2001, the Special Representative and the Special Rapporteur on freedom of opinion and expression transmitted a communication on the case of Mr. Pedro Nolasco Ndong, President of the Press Association of Equatorial Guinea (ASOPGE), who was arrested at the airport in Malabo on 13 May 2001 when he was returning from a seminar organized by UNESCO on the occasion of International Press Freedom Day. Without giving him any explanations, the police confiscated a report on the situation of freedom of the press in Equatorial Guinea since 1991, all of the documentation distributed at the seminar and US$ 100. Although Mr. Pedro Nolasco Ndong contacted the Ministry of the Interior, the General Security Department and the Ministry of Information to have the documents that were confiscated returned to him, he has still not recuperated any of his belongings.

59. According to press information, on 12 June 2001, the Director General of National Security, Mr. Antonio Mba Nguema, ordered that Radio Asonga, a private station belonging to Mr. Teodoro Nguema Obiang Mangue, the son of the President, should be shut down because he was carrying out activities contrary to the country's policies by broadcasting threatening information against senior army officials and inciting the population by means of a radio station belonging to him.

60. On 27 June 2001, three soldiers confiscated the identity card of Mr. Daniel Darío Martínez Ayecaba, editor of the newspaper *El Tiempo,* and forced him to pay a fine of 5,000 CFA francs to get it back. When asked why they had taken his document, the sergeant said that he was "one of the ones who was writing articles against the Government in order to stir things up". The journalist went to the police to report the incident, but they told him that it was a personal problem between him and the soldiers and that there was nothing they could do.

61. With a computer, a printer and a photocopying machine, as suggested by the Special Representative, the Government set up an official printing office in 2000 which publishes the *Boletín Oficial del Estado* containing laws and administrative acts. It has eight employees and brought out 37 issues between January and November 2001, i.e. an average of about one issue

per week. Periodicity and print run are still not regular and depend on the initiative or requests of ministers, who are the main users. There is a public distribution box in a hotel in the capital. These aspects are all subject to improvement, but it is to be welcomed that it has been realized how important the regular publication of legal provisions is.

I.2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. General economic situation

62. Since 1995, Equatorial Guinea has been experiencing an oil boom. It is estimated that production, which amounted to 7,000 barrels a day in that year, now stands at over 300,000 barrels a day, but there are no official figures. According to the Ministry of Labour, the oil sector accounts for 20 per cent of formal employment and 97 per cent of Equatorial Guinea's GDP, while the Human Development Report 2001 published by UNDP, states that GDP rose from US$ 1,817 in 1998 to US$ 4,676 in 1999, an increase of 233 per cent.

63. In 2001, an IMF mission examined changes in the economic and financial situation since its last mission in 1999 and found that oil resources are being handled without transparency and without fiscal control over payments made by oil companies. The recommendations made in 1999 that all resources from the oil sector should be channelled into a single open account in the Bank of Central African States have not been implemented and many of these resources are in accounts abroad. Timber production has declined in the past year, but it is still fast paced, i.e. 50 per cent higher than the desirable level of sustainability, according to the IMF.

64. According to the Human Development Report 2001, Equatorial Guinea has moved up from 131st to 110th place on the Human Development Index and is now in the group of medium human development countries. In his preceding report, the Special Representative pointed out that the greater wealth produced in the country has not been converted into effective human development. This trend continues at an alarming rate, since the gap between GDP and the Human Development Index has gone from -4 points to -31.

B. Right to health

65. According to the Minister of Health, the Government has put a great deal of effort into the rural health and food safety programme since late 2000, but the results can be evaluated only in the future. Well digging and latrine construction programmes have been carried out with UNICEF's support. Some private companies and the national Red Cross are implementing a programme to improve the rural population's health conditions.

66. The Minister informed the Special Representatives that there had not been any substantial progress in action to combat malaria and AIDS, although there are two programmes for these diseases. The malaria mortality rate is still high. According to studies on AIDS, there has been an increase in HIV/AIDS morbidity. The HIV rate is estimated to be 7 per cent, with one of the highest rates of increase in Africa. The Government is in the process of drawing up programmes which emphasize education and prevention and involve the introduction of sex education courses in schools, the distribution of condoms and awareness-raising programmes.

67. Health conditions in most of the country continue to be poor. Of 300 public health posts created in 1983, only 117 are still in operation, while 89.8 per cent of senior health workers are in the cities of Malabo and Bata. Government sources told the Special Representatives that US$ 1 million had been spent on medicines. According to non-governmental sources, the purchase was made without regard for needs in terms of diseases or the country's existing storage capacity. Many of these medicines could not be used.

68. On the basis of a recent bilateral cooperation agreement concluded with the Government of Cuba, 150 Cuban health professionals (doctors and paramedics) should arrive in Equatorial Guinea to improve the national health service and open health centres in the field. With the 68 national doctors and thanks to the presence of Nigerian, Chinese and Spanish doctors, the doctor/inhabitant ratio should improve to 1 doctor for every 2,459 inhabitants. As part of the same agreement and thanks to Cuba's support, the University of Equatorial Guinea now has a medical school and some 80 young people from Equatorial Guinea have the possibility of studying medicine in Cuba. Experts consider that the health situation should improve in the near future as a result of these initiatives.

69. The Special Representative was told that, although there are budget resources, the various ministries, including the Ministry of Health, face serious problems in using the funds because of cash flow problems. The Special Representatives urges the competent authorities to change the system for the disbursement of funds so that public administrative departments may carry out programmes satisfactorily and punctually.

C. Right to work

70. According to information received from the Minister of Labour, the labour sector is a priority government objective. As a result of the increase in oil production, Equatorial Guinean emigrants are returning to the country and foreign workers are coming in, thereby causing a rural exodus and bringing more women into the labour market. Foreigners account for 20 per cent of oil workers. The remaining 80 per cent are 4,000 to 7,000 Equatorial Guinean workers from the economically active population in the formal sector, which numbers more than 30,000. If the rural population, which represents 73 per cent of the total, was counted on the basis of other labour criteria, the economically active population would number about 150,000 persons, according to the Minister of Labour.

71. The Government states that it is making efforts to bring about greater labour market flexibility with a view to the conclusion of collective agreements. In order to amend the country's labour legislation, the International Labour Organization carried out a mission in April 2001, but the results were not available at the time of the Special Representative's visit to the country.

72. It is a matter of concern that companies with collective agreements continue to take a very large percentage of the wages to which workers are entitled, i.e. in some cases, as much as 70 per cent, according to reports.

73. In the past two years, the Government ratified the following ILO conventions: Convention No. 29 concerning Forced Labour, Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, Convention No. 111 concerning Discrimination in Respect of Employment and Occupation and Convention No. 182 concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour.

74. The Special Representative welcomes the commitments made by the Government as a result of the ratification of the above-mentioned Conventions, as well as the signature of the second agreement on the evaluation of the National Pact, which prohibits companies offering jobs from requiring a document proving non-membership of any political party. The Special Representative urges the Government to take effective measures to implement the agreement and to ensure that opponents who were dismissed from their jobs in the past may get them back or be given priority for new jobs. All opponents stated that the government party membership card continues to be essential for hiring in both the public and the private sectors.

75. The Special Representative also draws attention to the Government's undertaking in the second agreement on the evaluation of the National Pact to order Government payers to stop collecting fees on behalf of a particular political party. This implies that there is a tax for Government workers in favour of the official party. The Special Representative expresses the hope that this important undertaking will be complied with in respect of the right to work and the right to political freedoms.

D. Rights of girls and boys

76. The Special Representative welcomes the fact that Equatorial Guinea has finally submitted its first report to the Committee on the Rights of the Child. The report was completed in March 2001 and a copy was given to him during his visit.

77. The introduction to the report indicates that problems such as children deprived of liberty and the sexual exploitation of minors are not dealt with because they do not exist in Equatorial Guinea. However, the Special Representative found children deprived of liberty in the Bata gendarmerie sharing a cell with adults, as indicated in the section on the right to physical freedom. The Special Representative urges the prison and police authorities to comply with article 37 (b) of the Convention on the Rights of the Child: "States parties shall ensure that: ... No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest ... shall be used only as a measure of last resort and for the shortest appropriate period of time".

78. The Government's report to the Committee on the Rights of the Child maintains that, in Equatorial Guinean society, beating is still regarded as a necessary and effective means of punishing children (para. 109). The practice of depriving children of their liberty as a punishment inflicted by their parents is also a matter of concern. It must be regarded as a consequence and an aberrant form of the custom of punishing children as a means of educating them. The Special Representative encourages the Government to make society aware of the need "to protect the child from all forms of physical or mental violence, injury or abuse, neglect

or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (art. 19, para. 1, of the Convention on the Rights of the Child).

79. The Minister of Health and the Minister of Social Affairs admitted to the Special Representative that there has a been a marked increase in the presence of child prostitutes in the streets of the capital as a result of the arrival of growing numbers of foreigners who work on the drilling platforms. The Minister of Social Affairs stated that she intended to carry out a study to formulate a plan of action against child prostitution. The Special Representative urges that the plan should be formulated and implemented as soon as possible.

80. A recent report by the Ministry of Labour and UNICEF denounces the appalling conditions in which about 150 children of Benin and Nigerian nationality being subjected to forced labour live in Malabo and Bata. According to the study, 50 or 60 girls from Benin, aged between 8 and 16 years, are working in the Malabo market. They all belong to poor families who give their children to third parties to receive money in exchange for their labour, education and vocational training, which does not always take place. They are usually threatened by their parents or guardians, who deprive them of passports or identity papers. They do not speak the language of the country and do not receive any kind of education. The Nigerian children, who are between 12 and 15 years old, are to be found mainly in Bata. They work 12 hours a day without pay until the age of 18 or 19.

81. According to the same report, Equatorial Guinean children work long hours throughout the country in domestic, agricultural and commercial jobs and this may jeopardize their education and impair their health and physical, mental and moral development. The local authorities and teachers state that there is a link between child labour and the high drop-out rate (only 19 per cent of children who start primary school finish it) and the repetition rate (50.1 per cent).

E. Right to education

82. In his two preceding reports, the Special Representative expressed concern about the low proportion of State expenditure on education (5.6 per cent), late entry into the school system and high drop-out rates, more so among girls than among boys.

83. The Minister of Education told the Special Representative that this situation is changing and that the development strategy document for Equatorial Guinea sets the target of earmarking at least 15 per cent of Government revenue for education. The target is being met, since it stood at 17.8 per cent in the 2001 budget (5.8 per cent for current costs and 12 per cent for investment) and, in the budget adopted for 2002, investment in public education increased to 15 per cent. Within six months, it will thus be possible to build 250 schools, with two classrooms each, in 250 different villages (not counting the schools which are being built by logging companies to pay taxes in kind). The Minister said that "Equatorial Guinea had never spent so much money on education prior to 2001", and that he was "the wealthiest Minister in terms of the human and financial resources made available to him".

84. The Minister also indicated that, in July 2001, his Office had selected 1,400 new teachers by competitive examination, mostly for primary education, i.e. about half the number of teaching staff until that time. The aim was to halve the teacher/pupil ratio, which stood at 67 pupils per teacher during the school year ending in June 2001. The University Teacher Training School was established in order to improve teacher training, which is one of the main problems the country faces, and three teacher training classes have already graduated. Another major problem which the Ministry intends to solve with the assistance of Spanish cooperation is the updating of the curriculum, which goes back to 1987.

85. The Education for Development Project is being implemented with UNICEF's cooperation and it has two objectives to be achieved between 1999 and 2003: to raise the percentage of children who complete the first two years of primary school from 50 to 70 per cent and to increase the percentage of girls who complete the fifth year of primary school from 9 per cent to 18 per cent. UNICEF also provided assistance for a project that started 10 years ago to deal with and prevent late entry into school, based on informal preschool programmes (three to five year olds). Some 900 teachers will be assigned to these programmes.

86. There are no teachers' associations in Equatorial Guinea and the Ministry does not see why they should exist, an attitude which the Special Representative urges it to reconsider so that these associations may help democratically to satisfy the country's enormous educational needs and to meet the important challenges identified by the Ministry during this period of economic boom.

F. Status of women

87. Unlike the Minister of Education, the Minister of Social Affairs and the Status of Women expressed concern about the fact that, like others, her Office does not receive enough funding to carry out its activities. In November 2000, the Government's contribution to the Ministry accounted for only 0.23 per cent of the State budget and it was not always available owing to cash flow problems, as referred to in the section on the right to health.

88. The Special Representative and his distinguished predecessors and the Commission have recommended time and again that Equatorial Guinea should end the practice of imprisoning women for not returning their marriage dowry when they separate from their husbands, something which is blatantly contrary to article 11 of the International Covenant on Civil and Political Rights and prejudicial to the dignity of women. The Special Representative made it clear to the authorities that this comment is a criticism not of the dowry institution itself, but of some of its adverse effects. The section on the right to physical freedom described various cases of women imprisoned in the Bata police station and jail for not having returned their marriage dowry, one of them three days before the Special Representative's visit. The Government informed the Special Representative that, on account of the pardon granted by the President to start off the year 2001, the Government instructed detention centres not to admit women deprived of their liberty for reasons involving the marriage dowry. In cooperation with the Ministry of Social Affairs and the Status of Women, the Ministry of Justice and Worship is making every effort to regulate and amend customary civil law so that, in future, customs which are contrary to the law will no longer exist in Equatorial Guinea and the full implementation of

the principle of the interpretation of the entire legal system on the basis of the Constitution will be guaranteed. The Special Representative urges the Government not to hesitate to adopt the necessary measures so that women and other persons will no longer be imprisoned for not returning the marriage dowry.

89. Another matter of concern is the detention of women for alleged abandonment of the home, adultery or failure to certify their unmarried status, as referred to in the section on the right to physical freedom.

90. In his preceding reports, the Special Representative expressed concern about other types of discrimination against women, which are reflected in the fact that female illiteracy is three times higher than male illiteracy and the number of women who go on to the level of secondary education is half that of men, among other examples. According to official information from the Ministry, the situation has not improved much, owing to problems of a legal nature (lack of harmonization of national legislation with international instruments and subsidiary application of the Franco-era Spanish Civil Code, which does not favour women on important matters relating to marriage status) and problems of a customary nature (continued existence of discriminatory traditional practices against women, such as the above-mentioned imprisonment of women to force them to return the dowry and the lack of shared authority of the parents within and outside marriage).

91. The participation of women in social and public life continues to be minimal. In the ministerial cabinet constituted in February 2001, the 43 members appointed as Ministers of State, Ministers Delegate, Deputy Ministers and Secretaries of Government include only three women, whereas there were four in the previous Government. The situation in the House of Representatives of the People is no better, with only 5 of the 80 seats occupied by women.

92. According to information on national television, some 30 prostitutes said that they had been raped by Malabo policemen in June 2001. The prostitutes filed a complaint with the Ministry of Social Affairs and stated that the policemen kept them in detention for over one week, raped them and stole their money.

II. MONITORING OF TECHNICAL ASSISTANCE TO EQUATORIAL GUINEA IN THE FIELD OF HUMAN RIGHTS

A. Technical assistance by the European Commission

93. In late 2001, the European Commission adopted a 3 million Euro project for support in the fields of human rights, democratization and the rule of law. The project, which is scheduled to last 36 months, provides for activities in support of legal certainty (publication of the Boletín Oficial del Estado, codification of laws, harmonization of national law with international instruments), the House of Representatives of the People (organization of seminars, establishment of an information and documentation system) and civil society (formation of civil society, establishment of an information and communication network, establishment of structures for dialogue with the authorities and cooperation between civil society organizations).

94. The project's objectives include various topics recommended by the Commission on Human Rights, such as accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Representative recommends that other recommendations should also be taken into account in the implementation of specific project components. For example, verifying that the necessary measures are being taken to comply with the order that there should be no arbitrary detentions should be considered as a possibility when legal certainty support activities are carried out. The establishment and authorization of human rights organizations should also be an indicator of the results of activities provided for in the project as support for civil society.

95. A reason for uncertainty about the success of the project is the announcement that the European Commission will close its offices in Equatorial Guinea in 2002 and that it may ensure project follow-up through its office in Gabon. The Special Representative urges the European Commission to adopt the necessary provisions to deal with this contingency and, in particular, to ensure that project execution will contribute to the implementation of the recommendations of the Commission on Human Rights.

B. Technical assistance by the United Nations Development Programme

96. As stated in the preceding report, in October 2000, under an agreement with UNDP, the Government of Equatorial Guinea adopted a National Governability Programme (PNG), which is composed of four subprogrammes, one of which deals with human rights and good governability. No activity has been carried out since the signing of the Programme and the conference which had been planned to evaluate the Programme's implementation did not take place in September 2001.

C. Technical assistance by the Government of Spain

97. Spanish cooperation limits its areas of activity primarily to education, health and the cultural sector, as stated in other sections of this report. It also supports activities to promote the rights of women, such as an awareness-raising campaign which took place during the Special Representative's stay.

98. The Spanish authorities told the Special Representative that their relations with the Government of Equatorial Guinea include the objective of helping to improve its image and that one of the basic requirements is a firm invitation to respect human rights and implement the Commission's recommendations. The Special Representative appreciates this attitude, but stated and repeated his concern that there might be contradictions between the objectives of image improvement and respect for human rights if they are presented as being interdependent and invites the Spanish authorities to make a more clear cut distinction between them.

99. During his visit, various persons told the Special Representative that they were concerned about the changes made in the second half of 2001 in the programmes that Radio Exterior de España has been broadcasting for Equatorial Guinea for about 10 years. These changes are the dismissal of its director, the journalist Rafaela de la Torre, who is widely known throughout the country, the reduction in broadcast time and the changeover to a programme

intended not only for Equatorial Guinea, but also for all of Africa, although, according to its new director, there are no programmes in other languages than Spanish spoken in Africa and no plans to have any. Radio Exterior de España was the main source of information for the entire population of Equatorial Guinea and public officials, diplomats and ordinary people listened enthusiastically to its news and other programmes. Because there are so few information media in Equatorial Guinea, these changes are regarded as being serious and contrary to cooperation activities in the cultural sector.

100. The Minister of Justice told the Special Representative that, by the end of 2001, the Government intended to sign an agreement with the Madrid Bar Association because, in his words, "there are ethical problems in the practice of law that we cannot solve without its cooperation".

D. Technical assistance by the Government of France

101. The priority of French technical cooperation in the field of human rights is the training of staff working in the judicial sector. In order to achieve this objective, it plans to award 80 fellowships for courses in France. It is also supporting the establishment in 2002 of a Judicial Training Institute, which will be responsible for training judges and justice officials, and is providing funding for a French adviser in the Ministry of Justice, whose task is to advise the Minister on the reform of the Ministry and, in general, on the reform of the Equatorial Guinean judiciary, including a proposal for the establishment of the office of the Ombudsman.

102. As part of assistance activities, a French judge carried out a one-week mission in October 2001 to identify problems relating to the codification of the laws. The mission was the outcome of the decision adopted in spring 2001 to establish a National Codification Commission composed of six subcommissions on civil, criminal, economic-trade, family, customary and environmental law.

103. There are two French volunteer workers in the Bata gendarmerie whose assigned task is to support the rule of law and who are in a good position to contribute to the implementation of the Commission's recommendations, especially those relating to the rights to physical liberty, personal integrity and due process. The Special Representative shared this concern with the Ambassador of France in Equatorial Guinea, who said that he felt the same way.

III. ASSISTANCE TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND TO THE GOVERNMENT FOR THE ESTABLISHMENT OF A TECHNICAL ASSISTANCE PROGRAMME BY THE OFFICE OF THE HIGH COMMISSIONER

104. In his preceding reports, the Special Representative stated that "the technical assistance which (...) may [be] provide[d] to Equatorial Guinea can be productive provided that it starts from the implementation, within a reasonable period, of the recommendations made repeatedly by the Commission which do not require technical assistance (...), which could be accomplished by a simple government order to that effect, and the adoption of control mechanisms to ensure that the order is fulfilled" (E/CN.4/2001/38, para. 113).

105. On the basis of this criterion and as a result of the dialogue with the Government, the Special Representative identified, during his visit to the country, a number of immediate actions which the Government said it was prepared to take by the end of the first quarter of 2002: (a) accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (b) accession to the International Convention on the Elimination of All Forms of Racial Discrimination; (c) reminder to all relevant government bodies of the need to comply fully with international and national standards relating to detention in order to guarantee, in particular, that no one is deprived of his liberty without a court order; (d) improvement of facilities in detention centres to ensure that they all have decent and hygienic sanitation services; (e) submission to Parliament of a bill to guarantee that civilians are tried only by civilian courts; and (f) formalization of the instruction already issued by the Government that, in accordance with article 11 of the International Covenant on Civil and Political Rights, prison for civil debt, including the dowry that divorced women are forced to return, is prohibited.

106. The Government and the Special Representative agreed that, prior to the start of the Commission's fifty-eighth session in March 2002, the progress made on such actions should be assessed in order to determine their compliance and adopt the necessary measures for their implementation, if necessary.

107. In order to help build on or supplement these efforts, the Special Representative recommended in November 2001 that the Office of the United Nations High Commissioner should provide technical assistance by sending Equatorial Guinea one or more persons who are experts on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on police and judicial investigation techniques that do not involve torture or ill-treatment and on military justice in order to help the authorities and the population of Equatorial Guinea guarantee practical respect for the rights referred to in the above-mentioned actions through courses and seminars intended for the population and the government officials concerned. The Special Representative also recommended that effect should be given to the Government's invitation for a visit to the country by the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers.

108. As a result of the foregoing, the Office of the United Nations High Commissioner stated that it was prepared to implement the project in the first quarter of 2002. The evaluation of this experiment will provide valuable guidelines for the implementation of subsequent technical assistance projects based on the Government's willingness specifically to apply concrete recommendations made by the Commission.

109. For the Special Representative, these actions may be an important step towards the formulation by the Government, with the necessary participation of society and in accordance with United Nations criteria, of a national plan of action in respect of human rights based on the recommendations to Equatorial Guinea formulated by the Commission and also including the technical assistance that needs to be provided to Equatorial Guinea for their implementation.

IV. CONCLUSIONS AND RECOMMENDATIONS

110. The Commission's monitoring of the serious human rights situation in Equatorial Guinea since 1976 gave rise in 2001 to the implementation of some recommendations by the Commission which do not require technical assistance (organization of an official printing office for the publication of the laws, establishment of health services in one of the prisons where such services were lacking, eradication of the practice of persecuting persons entering the country with foreign press) and to the announcement of the Government's decision to implement other similar recommendations during the first quarter of 2002 (accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, the adoption of measures to prevent the practice of arbitrary detention, the prohibition of the trial of civilians by military courts, the improvement of health conditions in other detention centres and the elimination of the possibility that persons may be imprisoned for civil debt, especially divorced women who do not return the marriage dowry).

111. On the Special Representative's recommendation, the Office of the High Commissioner has decided to implement a technical assistance project which will help consolidate these steps through the sending of a mission of experts who will give detailed consideration during the first quarter of 2002, with the Equatorial Guinean authorities and society, to the subject matter of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, to judicial investigation techniques not involving torture and to military criminal justice. The mission's experience will provide criteria for the formulation of other technical assistance projects which will contribute to the preparation of a national plan of action on human rights based on other recommendations by the Commission.

112. These other recommendations are described in detail in the Special Representative's preceding reports (E/CN.4/2000/40, paras. 130 to 146, and E/CN.4/2001/38, paras. 114 to 122); they are not reproduced here for reasons of space, but they consist mainly in preventing and punishing arbitrary detention and torture; promoting freedom of expression and of the press; removing military blockades inside the country; guaranteeing the independence of the judiciary; codifying the laws; eliminating discrimination against women; encouraging political, cultural and racial pluralism; and satisfying basic food, decent housing, health, education and employment needs, with particular reference to the rights of girls and boys.

113. There are specific aspects of these recommendations on which the Special Representative considers it necessary to make an urgent appeal in respect of conditions of detention so that the authorities will keep orderly records of the admission and release of detained persons; refrain from torture; stop using the inhuman barracks of the Bata military gendarmerie as a centre for the detention of civilians or of any person; improve health conditions in all detention centres in general and in those of the Malabo and Bata police stations in particular; demilitarize the management of detention centres; stop imprisoning minors; prohibit detentions on the grounds of "superior orders", "insubordination" and "on behalf of" multinational corporations; not keep persons manacled in prison; refrain from using detainees as free labour for their service; stop forcing detainees to do unpaid work and, instead, encourage and remunerate voluntary work; prevent the "brainwashing" of detainees; and not allow persons detained by court order to be

released on the order of a government or military official. These are all recommendations which may be adopted directly and immediately by the Government without any need for special technical assistance.

114. Further measures are required to prevent women from being imprisoned for abandonment of the home, failure to certify unmarried status or adultery; to guarantee that criminal investigations are conducted by judicial authorities and not by military officials; to prevent popular trials from being held in Congress, without procedural guarantees; to deal with the increase in child prostitution; and to combat xenophobia against immigrants from neighbouring countries. The Special Representative urges the Government to formulate policies with a view to bringing about a prompt and satisfactory solution to these problems.

115. The Special Representative reiterates the appeal made in the past to all organizations which cooperate with Equatorial Guinea and to multinational corporations which are carrying out activities in the country to bring their programmes and activities into line with the recommendations of the Commission, through its Special Representative and the Office of the High Commissioner.

116. The Special Representative also reiterates his appeal that account should be taken of the invitation by the Equatorial Guinean opposition in exile to hold a political dialogue aimed at finding ways of guaranteeing democracy and human rights and also recommends that the Commission should express its willingness to take part, to the extent that it is lawfully able to do so, if this is considered useful by the parties.

117. The Special Representative notes with concern that some arbitrary measures adopted internationally to combat the reprehensible terrorist acts of 11 September 2001 are being used as an example and as a justification for human rights violations in Equatorial Guinea and he therefore urges the Commission and the Government to reaffirm the international obligations to respect and protect human rights and to deal decisively with the threat to their fulfilment posed by the temptation to violate human rights in order to guarantee security.

118. In view of the foregoing, the Special Representative recommends that the Commission should maintain and strengthen the decision that it has been maintaining for the past 26 years to keep a close watch on the situation of human rights in Equatorial Guinea, so that the recommendations repeatedly formulated to the country by the Commission may be implemented. To this end, what is needed is the renewal of the mandate of a special representative to monitor the human rights situation and the technical assistance given to the country and the adoption by the Commission of any additional measures that may be considered appropriate to guarantee the fulfilment of such a mandate and Equatorial Guinea's international obligations.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in parts of South-Eastern Europe

Report of the Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, Jose Cutileiro

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Executive summary

The present report is submitted by Jose Cutileiro, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia. The report covers developments in the area of the Special Representative's mandate up until the second week of December 2001 and is based on information gathered by Mr. Cutileiro in the course of his visit to the countries concerned and by the field offices of the Office of the High Commissioner for Human Rights (OHCHR).

I. BOSNIA AND HERZEGOVINA

The Special Representative emphasizes that those indicted by the International Criminal Tribunal for the Former Yugoslavia must be brought to stand trial. Moreover, the authorities in Bosnia and Herzegovina must ensure that persons responsible for serious violations of human rights during the conflict do not continue to exercise social, political, or economic control.

The Special Representative notes the recent imposition of amendments to the property laws and hopes these amendments will rectify the uneven implementation of property restitution which has been seen to date, and the implicit problems this has caused. At the same time, return cannot be envisaged without the full protection of human rights, especially for vulnerable groups. The international community, with the close participation of government partners, must pursue a rights-based approach to sustainable development.

The recent reduction in the number of persons authorized to act as police officers because of improper activities (so-called deauthorization) is a positive sign. Law enforcement agents must be held to a higher standard than the general citizenry, and it is hoped this will ameliorate the effects of a lack of a multi-ethnic, professional police force.

Other areas of human rights protection have been positive, such as the recent agreement between the Entity and Brcko District health funds to provide insurance coverage for all insured persons regardless of their location. This agreement and the manner of its negotiation, which did not necessitate any political intervention by the international community, are strongly endorsed by the Special Representative. In addition, moves to strengthen the legal framework in compliance with international standards are welcomed, including the proposed amendments to the State Law on Immigration and Asylum, the draft State law on protection of national minorities, and the adoption of the National Plan of Action to Combat Trafficking in Persons. The Special Representative encourages all institutions to ensure that these laws, once finalized, are inclusively applied throughout Bosnia and Herzegovina.

II. FEDERAL REPUBLIC OF YUGOSLAVIA

In the Federal Republic of Yugoslavia, the Special Representative recognized an overall improvement in the situation of human rights in the past year. Positive developments included the Governments' efforts to redress a number of human rights violations committed by the former regime, including the release of many Albanian political prisoners, investigating the fate of persons missing during the Kosovo conflict in 1999 and finding solutions for all displaced persons in the Federal Republic. He noted, however, that closer practical cooperation must be

developed - particularly between the Federal Republic and the authorities of the United Nations Mission in Kosovo (UNMIK) - if these issues are to be resolved without further delay. The Special Representative also noted that a number of important steps had been taken to reform national institutions such as the police, the judiciary and prisons - all of which will have a direct influence on the rule of law and the promotion and protection of human rights in Yugoslavia in the future. At the same time, he found that the overall process of reform remains slow, piecemeal and ad hoc and that the unresolved status of the Republic of Montenegro within the Federal structure and ongoing political divisions in the Federal Republic and Serbia continue to impede cooperation and dialogue between the constituent authorities at all levels of Government. He was also concerned about a number of cases allegedly involving ill-treatment by the police - albeit not in a systemic or systematic way -and called on the relevant authorities to investigate these allegations and to improve the overall process by which police complaints are investigated, including oversight mechanisms.

In Southern Serbia, he welcomed the peaceful settlement of the conflict in May 2001 and noted the value of political dialogue in ending and preventing armed conflict. The Special Representative noted the good progress made in implementing the terms of the political settlement (the "Covic Plan") to improve the social, economic and political rights situation for ethnic Albanians in southern Serbia. He noted, however, that if momentum and confidence are to be maintained among all affected ethnic populations in the area, then more progress must be demonstrated in a number of key areas, notably in achieving the full and active participation of ethnic groups in all aspects of public and community life

In Kosovo, the Special Representative welcomed the promulgation of a legal framework for provisional self–government and the recent holding of elections for the Kosovo legislative Assembly and executive body. He noted the progress made and the obstacles still faced by the United Nations civil administration (UNMIK) and military component (KFOR) in providing a safe and secure environment in Kosovo. In particular, he identified three areas of ongoing concern: the human rights situation and physical protection of ethnic minority communities in Kosovo; the quality of the rule of law, including the independence of the judiciary; and the extent to which human rights standards are reflected and integrated into the policies and practices of UNMIK and KFOR.

Introduction

1. The present report is submitted by Jose Cutileiro, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia, in accordance with Commission resolution 2001/12. The report covers developments in the area of the Special Representative's mandate up until the second week of December 2001 and is based on information gathered by Mr. Cutileiro in the course of his visit to the countries of his mandate and by the field offices of the Office of the High Commissioner for Human Rights (OHCHR). The Special Representative would like to thank all those individuals and organizations which have supported his mandate since he assumed his position in June 2001. In particular, he would like to pay tribute to the OHCHR human rights field staff, both international and local, who have demonstrated great dedication to the protection and promotion of human rights, and who conduct their work in often difficult circumstances. The Special Representative also wishes to express his gratitude to the Governments which have provided financial support to OHCHR and enabled him to exercise his mandate effectively.

2. The Special Representative presented his first report to the United Nations General Assembly on 11 October 2001 (A/56/460). As this is his first report to the Commission on Human Rights, it is an update of and supplements the earlier report.

I. BOSNIA AND HERZEGOVINA

3. The Special Representative travelled on mission to Bosnia and Herzegovina from 24 to 27 July 2001. During his visit in Sarajevo, he met with members of the Presidency and State ministers. Further, he met with the High Representative and other interlocutors from international organizations and civil society. He did not visit government officials of the Federation or the Republika Srpska.

A. General observations

4. The 1995 General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively, the "Peace Agreement") (A/50/790-S/1995/999) brought an end to the egregious violations of human rights and humanitarian law in Bosnia and Herzegovina, despite the fact that many of its provisions have never been fully complied with by the parties. Reporting on the situation of human rights in Bosnia and Herzegovina requires assessment in the light of the international human rights standards set by the United Nations, rather than the situation as it was at the signing of the Peace Agreement, a tall order indeed. Compounding the problems directly associated with the conflict, the economy continues to stumble along the path towards a free market system, with limited transitionary safeguards. There is a weak sense of statehood and citizenship of that State, and thus no real sense of general community. Nationalisms (i.e. Bosniak, Serb and Croat biases) and corruption continue to undermine the political and legal system. Despite recognition by many of those within the fragile coalition Government of the need to comply with international human rights obligations; implementation has been very slow owing to the aforementioned problems.

5. The Special Representative reiterates his call for full implementation of the Decision on Constituent Peoples adopted by the Constitutional Court of Bosnia and Herzegovina in September 2000. This decision affirmed that Bosniaks, Croats and Serbs are constituent peoples of the State, and not solely of one Entity or the other. To date, the Entities have undertaken few efforts to comply with this decision. In recognizing the diverse fabric of society in Bosnia and Herzegovina, however, the Special Representative is encouraged by moves to elaborate a draft State law on the protection of national minorities, which will give legislative form to the strong non-discrimination provisions in the Constitution.

B. War crimes and reconciliation

6. Cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) remains an outstanding issue. In September the Republika Srpska (RS) adopted its law on cooperation with the ICTY, which, although technically unnecessary, sends a potentially positive message. It will, however, be of little use if the RS authorities do not commence actions to support their words. The Special Representative once again reminds the State and Entities of their obligation under the Peace Agreement (annex 4, art. II (8)) to comply fully with the ICTY and its orders issued pursuant to article 29 of the Statute of the Tribunal, reiterated in Security Council resolution 1357 (2001).

7. Beyond mere cooperation with ICTY, annex 7 to the Peace Agreement places responsibility on the domestic authorities for undertaking crucial measures including "the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary and police forces and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups." In light of this provision, and given the lack of action by the State and Entities, the Special Representative welcomes the recent increase in the number of persons whose authorization to act as police officers has been withdrawn (so-called "deauthorization") by the Commissioner of the United Nations International Police Task Force. By holding these persons accountable to the higher standard demanded of law enforcement officials, it will be possible for the community at large to regain confidence in those directly entrusted with their protection.

8. It is, nonetheless, essential that the State and Entities implement an adequate legal framework to carry out their duties under annex 7. This is necessary to allay community fears of ethnic bias, to promote transparency in local government, and to improve the climate of security by ensuring that those culpable of human rights violations no longer exert political, economic, or social control.

9. Further promoting reconciliation and closure of issues directly related to the conflict, the first DNA-assisted identification of a missing person in Bosnia and Herzegovina was processed on 16 November 2001. At the time of writing, over 6,900 bodies have been exhumed under the Joint Exhumation Process conducted by the Entity commissions, and identifications are ongoing. This recovery and identification process allows the families of the missing to bring closure to the uncertainty with which they have lived for the past six years.

C. Rule of law

10. Notwithstanding the recent police deauthorizations, the persistent lack of a multi-ethnic and professional police force and a functioning and genuinely independent judiciary necessarily undermine the rule of law. In these organs, as within the civil service, there remains a lack of professionalism predicated on ethnic and political bias as well as corruption. Given the planned exit of The United Nations Mission in Bosnia and Herzegovina (UNMIBH) at the end of 2002, the Mission should intensify its focus on institutional reform of law enforcement agencies, whilst continuing its scrutiny of individual officers. Minority representation in the police forces remains well below agreed targets, with a mere 3 per cent of officers in the Republika Srpska from minorities and 5 per cent in the Federation.

11. Nonetheless, progress in the field of law enforcement significantly outpaces progress in the field of the judiciary. The Independent Judicial Commission has only very recently begun to observe concrete results from the Comprehensive Review Process, which was originally to be completed in early 2002. This process should be extended and intensified.

12. The inability to prevent corruption undermines institutional structures and erodes sustainable development. Internal control structures are lacking.[1] Overall, the extent to which corruption features in the economy, and in society in general, remains a disturbing obstacle to the building of a country where human rights are respected and violations redressed by the agents of the State and Entities.

D. Return

13. Issues related to the return of refugees and displaced persons retain their prominence in Bosnia and Herzegovina. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), over 680,000 people from Bosnia and Herzegovina are still displaced persons or refugees without a durable solution. Implementation of property laws continues to be unequal. In the Federation the property implementation ratio[2] is only 46 per cent, but in the Republika Srpska the ratio is an appalling 27 per cent.[3] At the same time, Bosnia and Herzegovina is witnessing an increase in the number of returnees, in part due to the uneven implementation of the property legislation and the consequent evictions which may leave persons with no option but to return to their pre-war places of residence, potentially to unreconstructed or occupied houses. Further compounding the situation is the gap between housing reconstruction needs and ongoing reconstructions. According to UNHCR, this gap for 2001 is 22,400 housing units.

14. While the State and Entities must ensure consistency and non-discrimination in the implementation of the property laws, the same must be done to ensure that the physical security, economic rights and social protections of the people are assured. Third countries should remain wary of returning certain categories of refugees to Bosnia and Herzegovina, especially when those refugees are determined to be in continued need of international protection by UNHCR or are from areas where there is no genuine climate of security for ethnic minorities.

15. Further complicating the state of return, there are still 23,500 Croatian Serbs, according to UNHCR, in Bosnia and Herzegovina, primarily in the Banja Luka area. This seriously affects return from other parts of the country. The Special Representative supports the recommendation of the Committee on Economic, Social and Cultural Rights calling upon Croatia to take effective measures to accelerate the return of Croatian refugees, particularly ethnic Serbs without discrimination. In particular, Croatia should address property, occupancy rights, naturalization, and citizenship (see E/C.12/1/Add.73). Such moves would have a great impact on alleviating the refugee situation in Bosnia and Herzegovina. As a member of the Commission on Human Rights, the Republic of Croatia should stand firmly behind efforts to find a solution to this problem.

16. Legal impediments to the return and reintegration of refugees continue to be of utmost concern throughout the region. It is not only the form of law but also its practical effect that needs to be addressed to guard against direct and indirect discrimination. Issues such as reacquisition of permanent residence and access to documentation evidencing status, property, tenancy rights and welfare rights plague resolution of the situation of many potential returnees. The recent announcement by the Presidency of Bosnia and Herzegovina that dual citizenship agreements would be pursued with Croatia and the Federal Republic of Yugoslavia is a welcome development and one which, it is hoped, will gain support from neighbouring countries.

E. Economic, social and cultural rights

17. Most of the human rights violations seen in Bosnia and Herzegovina are predicated on some form of discrimination. While the poor economic situation affects the country as a whole, it has a disparate impact on vulnerable groups such as minorities and returnees. Allegations of differential access to employment, social welfare, health, public utilities and education continue to be reported. The international community should do its utmost to try to ensure that development policies for Bosnia and Herzegovina emphasize the direct linkage between satisfactory human rights standards and sustainable development.

18. Unemployment runs high, with official estimates at 40 per cent for the State and higher in the Republika Srpska. The national social protection system is unable to respond adequately to the acute social needs, and the lack of economic regeneration and decreasing international aid serve only to reinforce the problem. Even where available resources are insufficient, however, the State is obligated to ensure the widest possible enjoyment of the rights under prevailing circumstances.

19. The complex division of authority between Entities plaguing health care and protection may be ending. On 5 December 2001, the Directors of the Entity (and Brcko District) health insurance funds signed an agreement that all those insured in one Entity can receive health coverage in the other, with specific provisions entitling pensioners to added benefits.[4] Notably, this is the first major inter-Entity agreement prepared and negotiated without the intervention of the international community. This agreement and the manner in which it was negotiated are strongly endorsed by the Special Representative.

F. Irregular migration: trafficking

20. Irregular migration into Bosnia and Herzegovina is an ever-increasing problem. An inadequate legislative framework coupled with an absence of procedural regulations has created a situation where persons of particular concern, namely asylum-seekers, trafficked persons, stateless persons, and those at risk of torture or inhumane or other degrading treatment, cannot be appropriately identified and singled out for special protection.

21. During the course of 2001, the State failed to adopt regulations for the implementation of the 1999 Law on Immigration and Asylum and, therefore, superseded legislation was generally applied, resulting in unpredictable procedures for entry, expulsion and deportation. As numerous inadequacies have been identified within the provisions of the Law since its promulgation, the Law itself is being amended. Such efforts are to be encouraged as such amendment would not only establish a more comprehensive migration framework and overcome identified obstacles to the Law's practical implementation, it would also avoid additional burdens on overstretched State ministries in the long term.

22. The situation with regard to irregular migration is exacerbated by the fact that the State Border Service controls only 75 per cent of the border, leaving some crossings under the control of the Entity or cantonal police. The Special Representative welcomes efforts to increase State Border Service control and expects that this will have significant impact on controlling migration.

23. Trafficking in persons, to date all women and children, remains a serious problem in Bosnia and Herzegovina. It is in itself a violation of human rights and it gives a boost to organized crime.

24. Evidence demonstrates that a substantial part of the market for trafficked persons has been created by the large civil and military international presence in Bosnia and Herzegovina. More attention has to be paid to ensuring that there are codes of conduct and that these are rigidly and transparently implemented.

25. The Government is to be applauded for the recent adoption of a national plan of action to combat trafficking.

26. On 11 September 2001, the Council of Ministers adopted a plan outlining measures to be considered in combating terrorism in Bosnia and Herzegovina. To date, legislative amendments and proposed new laws have been discussed. In this process, the Special Representative urges the State to adhere strictly to its international obligations to uphold human rights standards and the rule of law.

27. Bosnia and Herzegovina must be made accountable for the fulfilment of its obligations under international conventions to respect, protect and fulfil the human rights of all persons without discrimination. Currently, Bosnia and Herzegovina is overdue in its reporting to the United Nations treaty bodies. Although understandable in the recent past, Bosnia and Herzegovina, as part of the accountability process, must begin to meet these obligations.

II. FEDERAL REPUBLIC OF YUGOSLAVIA

28. The Special Representative undertook a visit to the Federal Republic of Yugoslavia (FRY) between 27 August and 4 September 2001. During his visit, the Special Representative met in Belgrade with senior members of the Federal Government including President Vojislav Kostunica - and with the Ministers of Foreign Affairs, Justice, and National and Ethnic Communities, respectively, and with Serbian Deputy-Prime Minister Nebojsa Covic and other senior government officials in the Republic of Serbia. In Podgorica, he met with officials of the Republic of Montenegro, including the Ministers of Foreign Affairs, the Interior, Justice, and National and Ethnic Groups. In Kosovo, he met with the Special Representative of the Secretary-General, Hans Haekkerup, the Commander of the Kosovo Force (KFOR), senior officials of UNMIK and local political leaders. Throughout the region, he met community leaders and representatives from civil society who are dealing with human rights issues and with members of the international community, including the Organization for Security and Co-operation in Europe and the United Nations.

29. The Special Representative wishes to acknowledge that throughout the visit, he received good cooperation from all authorities and he enjoyed frank and open dialogue, not only on progress made, but also on obstacles to the enjoyment of human rights within the Federal Republic of Yugoslavia.

A. General observations

30. The human rights situation has improved considerably since the dramatic events of October 2000 that led to the ousting of former President Slobodan Milosevic and opened the way for democratic changes in Serbia and the Federal Republic. The opposition coalition that defeated Mr. Milosevic, the Democratic Opposition of Serbia (DOS), overwhelmingly won democratic elections in Serbia in December 2000, formed a new Government in February 2001, and spent most of the year initiating reforms of legal codes and State institutions that had been used by the former Government to control political power and repress opposition.

31. The country is still in a state of transition with many institutional changes having been undertaken but much still to be done to consolidate these efforts. The Federal Government and the Republic governments in Serbia and Montenegro continue to face a number of serious challenges in effecting this reform process. First, the country's economy was devastated by 10 years of war and sanctions, leaving the new authorities to undertake economic reform when national social, health and educational systems were in a state of serious degradation. Second, the reform process has been severely impeded by the unresolved status of the Republic of Montenegro within the federal structure and the lack of practical cooperation and coordination between the different Federal and Montenegrin authorities. Third, a conflict in southern Serbia launched by ethnic Albanian armed groups has preoccupied the attention of the federal authorities for a significant part of the year. The armed conflict has been largely resolved but considerable work remains to be done in the area of political reform and economic reconstruction in the region. And fourth, deep political disagreements between the two principal parties in the DOS coalition have adversely affected progress on key legislation, including laws directly related to human rights and the rule of law.

32. Within this context, federal authorities have made a number of significant achievements. Senior government officials within the Federal Government and the Republics of Montenegro and Serbia have reiterated their commitment to undertake the reform of those national institutions that are necessary for the protection of human rights, notably in the areas of national minorities, justice, law enforcement and the media. Progress has been made in addressing a number of historical human rights violations committed by the former Government prior to October 2000, including the release of many political prisoners, investigations into the fate of persons of different ethnic groups missing during the armed conflict in Kosovo in 1999 and criminal investigations into murdered or other disappeared persons. The conflict in southern Serbia was successfully resolved though negotiations with ethnic Albanian leaders, the armed groups and the North Atlantic Treaty Organization. Relations with UNMIK in Kosovo improved throughout the year, leading to agreement on a strategy for cooperation on a number of key issues and endorsement by the federal authorities for Kosovo Serb participation in the Kosovo parliamentary elections that were held on 17 November 2001.

33. The Special Representative remains concerned, however, about progress on key legislative reforms and the process through which they are drafted and promulgated. Institutional reforms necessary to establish the rule of law, reform the judiciary and police, combat organized crime (including trafficking in human beings) and establish the basis for a free media have moved slowly. While a package of laws on judicial reform has been adopted, legislation governing labour, local self-government, a national human rights institution and the media are still pending. Of equal concern is the process by which reforming legislation is drafted and adopted. There is no consistent and transparent mechanism - including an opportunity for public consultation and comment - whereby laws are drafted and promulgated. The Special Representative repeats his earlier concerns about the piecemeal and ad hoc way in which the process is presently undertaken. Crucially, it remains difficult to obtain information on the status of such draft laws and to review and comment on them. The Special Representative is aware that this is a difficulty faced by national non-governmental organizations and international agencies alike.

34. The situation in southern Serbia remains largely peaceful and good progress has been made, notably in the areas of peace and security. Nonetheless, a number of key commitments made by the federal and Serb authorities and the international agencies have not been fulfilled yet, and this is contributing to an increased level of discontent amongst the ethnic Albanian community.

35. Owing to the lack of physical security for ethnic minorities in Kosovo, the prospect of any significant numbers of displaced persons returning to Kosovo remains bleak, at least in the short to medium term. The lack of any clear and durable solution for displaced persons raises serious human rights issues of concern to the Special Representative, particularly the unclear legal status and economic and social rights of internally displaced persons living in Serbia. On another issue relating to Kosovo, approximately 200 Kosovo Albanians, detained under the former Government in connection with the Kosovo conflict, remain in Serbian prisons in spite of a general agreement between the Federal Republic and UNMIK to transfer them to Kosovo.

36. In Kosovo itself, UNMIK took two major steps towards the goal of substantial autonomy, expressed in Security Council resolution 1244 (1999), by adopting a provisional constitutional

framework and then carrying out successful Kosovo-wide elections for a parliament and executive. The Special Representative notes these important achievements, and particularly notes the successful effort by UNMIK to encourage Serb participation in the elections. Nonetheless, the position of minorities in Kosovo remains tenuous, efforts by UNMIK to address serious problems with the judiciary through the creation of a special police-judiciary "pillar" have not yet borne fruit, and more needs to be done to integrate the human rights dimension into the Mission's legislative and institution-building work.

B. Situation in Serbia (excluding Kosovo)

1. Programme of legislative reform

37. The Special Representative welcomes progress made under the ambitious programmes of legislative reform undertaken by the Federal and Republic Governments. Progress in the areas of penal reform - such as the Federal Penal Code and Code of Criminal Procedure and, among others, laws to decentralize and promote a multi-ethnic police force and on anti-discrimination, local self-government, the judiciary, ethnic minorities, the creation of national human rights institutions and independence of the media - will have a significant effect on the overall quality of human rights protection in Serbia. For example, the draft law on changes to the Penal Code provides for a new crime of "violence against members of another ethnicity or religious community" and for a new chapter which contains crimes of "corruption" in various fields such as justice, police, administration, and health. It is of concern, however, that the offence of "spreading false news" is retained in the new draft and may be an unreasonable restriction on the freedom of the media. The draft law on local self-government adopted by the Government of Serbia in December 2001 creates the institutions of "Ombudsman for Local Self-Government", as well as a "Council for Inter-ethnic Relations" in municipalities of ethnically mixed population.

38. Whilst these legislative reforms are welcomed, the Special Representative remains concerned that the present process of legislative reform continues to develop in an ad hoc, rather than a coordinated framework with human rights as the core and founding principles. The lack of a consistent mechanism whereby legislation is drafted, adopted and promulgated can lead to contradictions and inconsistencies, particularly between the Federal Constitution and the Constitution of the Republic of Serbia. As all draft laws must be fully compatible with the Federal Republic's obligations under international human rights law, the Special Representative encourages better and more centralized coordination between authorities at the Federal and Republic levels and a broader and more transparent basis for consultation with civil society as part of that process. The Special Representative recommends that all key draft legislation be officially gazetted and that a reasonable period be established during which interested members of civil society and the international community can make substantive contributions. This will improve the coherence and overall credibility of the legislative process.

2. National human rights institutions

39. A number of Federal and Republic ministries have taken initiatives to develop national ombudsman offices. These include, inter alia, draft laws on a generic ombudsman prepared by the Federal Ministry of Justice and a thematic ombudsman for ethnic minorities supported by the

Ministry of National and Ethnic Communities. The Special Representative welcomes these and other efforts to establish independent and functional national institutions. However, he cautions against the creation of a multiplicity of national and municipal structures that are not adequately funded and functionally independent. He is of the view that the structure and functions of such offices should be better coordinated inter se - preferably in a single unified entity - and that such an entity should be fully compatible with the Paris Principles established by the United Nations for national human rights institutions. In this context, he welcomes the efforts by the Government of Serbia to prepare and adopt legislation to create a national ombudsman and, in particular, the three-month period that the Government has allowed for general public consultations, including with the OSCE, OHCHR and the Council of Europe. This mechanism of transparency and public dialogue is one that he would recommend for all other legislative processes that relate to human rights.

3. Police reform

40. The Special Representative notes that reform of the police is and remains a priority area of importance to the protection of human rights in the Federal Republic of Yugoslavia. He welcomes the steps taken by the Serbian Ministry of the Interior, in association with the OSCE, to undertake a major assessment of measures required to ensure a professional police force in the country. The result of the assessment was a broad range of measures, including legislative reform of the Serbian Police Law, improved recruitment and training on all aspects of policing - including a police code of ethics and human rights that reflects international and European standards - and recommendations to improve the multi-ethnic and gender balance within the police, community relations and the image of the police in the country. The Special Representative welcomes these efforts to depoliticize and professionalize the police force and calls on all relevant actors, including international donors, to implement the measures as soon as possible.

41. He remains concerned, however, about a number of specific allegations of human rights violations by individual members of the police force - including allegations of police ill-treatment and brutality at the time of arrest or whilst persons are in police custody - and by reports of racial prejudice among law enforcement officers, particularly against Roma. These include allegations of a 12-year-old Roma boy being ill-treated at a Belgrade police station on 21 June 2001; a Belgrade Roma beaten by four plain-clothes policemen at Zvezdara police station on 5 March 2001; two Roma beaten by police at Backa Topola on 7 May 2001; a Roma family from Kosovo mistreated by police in Novi Sad on 12 June 2001; and Roma children beaten by a police patrol in Novi Sad on 22 September 2001. In all of these cases, it is alleged that there has been little or no action taken to investigate the incidents.[5]

42. Whilst the Special Representative is satisfied that these allegations do not disclose any systemic or systematic pattern of abuse within the police force in general, they do indicate the lack of an effective "supervisory mechanism" by which allegations can be effectively and promptly investigated and, where necessary, effective disciplinary action taken against the perpetrators. In the context of broader police reform, he calls upon the relevant authorities to establish such a mechanism as a matter of priority.

4. Protection of national minorities

43. The Special Representative notes the good progress made to strengthen the legislative framework for the promotion and protection of ethnic minorities. On 11 May 2001, the Federal Republic of Yugoslavia acceded to the European Framework Convention for the Protection of National Minorities, which accession entered into force on 1 September 2001. At the Federal level, the Government expects shortly to pass a law on protection of national minorities - which contains the basic protections prescribed by the European Framework Convention and includes provision for an ombudsman function. The Special Representative notes the linkage with other draft laws such as a national law on an ombudsman, a law on local self-government and a law on anti-discrimination. He hopes that the Federal and Republic authorities will adopt this package of measures as soon as possible but stresses the importance of broad-based public consultation and coherence between the various pieces of legislation. He notes, however, that the Constitution of the Republic of Serbia provides lesser guarantees of minority rights than the Federal Constitution, leaving minority members living in Serbia more vulnerable, and that there are no special legal remedies for the protection of minority rights in the constitutions of the Yugoslav republics.[6]

44. The Special Representative also recognizes the progress made by the Federal Ministry for National and Ethnic Communities not only in strengthening the legislative framework, but also in creating greater public awareness of minority rights through a tolerance campaign launched in November 2001. Positive steps also include the opening of an office in southern Serbia, the signing of a bilateral agreement on the protection of the rights of national minorities with Hungary, and the initiation of the same process of bilateral agreements with neighbouring countries including Romania, the former Yugoslav Republic of Macedonia and Croatia. He also encourages the Federal and Republic of Serbia governments to examine the practical links between the protection of minority rights and education - in particular the importance of integrating human rights and minority rights awareness into teacher training and school curricula.

5. Judicial Reform

45. The Special Representative welcomes steps taken in the Republic of Serbia to reshape and reorganize the court system through the adoption, in November 2001, of a package of four new laws: the Laws on Courts, the Law on Judges, the Law on the High Council of Justice and the Law on the Public Prosecutor. The Law on Courts establishes courts of general jurisdiction (Municipal, District, Appeal and Supreme) and courts of special jurisdiction (Trade, Higher Trade and Administrative). The Law on Judges addresses the status of judges, including a more transparent and independent process for the nomination, promotion and dismissal of judges, and ensures that all issues relating to their status remain in the hands of the judiciary. However, it is possible that the transfer of judges to another court even to a lower jurisdiction and without his/her approval, for up to one year could be used to punish those who represent a dissident voice. The Law on the High Council of Justice establishes a High Council to propose candidates to the Parliament for the positions of president of the courts, judge and public prosecutor and the positions of lay judge and deputy prosecutor. The Law on the Public Prosecutor provides for a permanent position of a public prosecutor and deputy prosecutor for an eight-year term of office, with the possibility of reappointment.

46. These structural changes, including increased remuneration for judges, will be essential in establishing a judiciary that is fully independent and free from the political influence that characterized the regime of President Milosevic. The Special Representative welcomes these developments but also repeats his concern that in future, such legislative processes should include broader-based public consultation, which was lacking in the promulgation of the present package of measures.

6. Ethnic Albanian Kosovars in detention in Serbia

47. The Special Representative welcomes the release from detention of a number of ethnic Albanians from Kosovo under the Amnesty Act passed in early 2001 and the release of the so-called "Gjakove/Djakovica Group" of 143 ethnic Albanians following a court review. He remains concerned, however, that approximately 200 ethnic Albanian Kosovars are still in detention, of whom approximately one half were convicted of ordinary criminal offences and the other half convicted of offences characterized as political, including terrorist-related acts. The Special Representative remains greatly concerned that these cases have not been resolved more than a year after UNMIK and Federal authorities began to discuss them. UNMIK and Federal authorities recently agreed to return all of these individuals to UNMIK's jurisdiction in Kosovo and the Special Representative urges the relevant authorities to effect the transfer promptly.

7. Missing persons

48. The Special Representative is advised that approximately 5,000 persons of all ethnicities remain missing and presumed dead following the conflict in Kosovo in 1999.[7] He remains deeply concerned at the slow progress being made in carrying out exhumations and forensic analyses of remains discovered in Serbia and in the province of Kosovo. He urges all authorities, in particular the Serbian and UNMIK authorities, to improve their practical cooperation on this issue and encourages international actors to provide the necessary technical and financial support to enable this work to continue.

49. The Special Representative is also concerned at the lack of progress in criminal investigations relating to other missing or murdered persons, notably the disappearance from Belgrade on 25 August 2000 of former Serbian President Ivan Stambolic and the murder of journalist Slavko Cheruvija on 11 April 1999. However, he welcomes the recent commitment made by the Serbian Minister of Justice, Dusan Mihajlovic, to advance these and other outstanding police investigations.

8. Mass graves in Serbia

50. In recent months, Serbian authorities have discovered more than 400 bodies[8] in five mass graves reportedly containing the remains of Kosovo Albanians (including women, children and the elderly) whose bodies had been transported from Kosovo and buried in Serbia in 1999. Serbian police and justice officials are working closely with forensic experts to establish the identities of remains at these sites, but progress is slow. Many of the bodies are buried at sites controlled by Serb security services. The Special Representative is deeply concerned that the police investigations have not yet appeared to make much progress and the issue of the mass graves has largely disappeared from public discussion. One of the central challenges facing

societies emerging from conflicts, particularly ethnic-based violence, is to begin a process of coming to terms with the past, identifying crimes committed in the name of the State and arresting and holding those responsible. The discovery of these mass graves in Serbia, particularly around Belgrade, is an opportunity to face the crimes of the recent past openly and thoroughly. The Special Representative urges the Federal and Serbian authorities to conduct a full and transparent investigation, and also encourages more public discussion of the issues of human rights and responsibility associated with these crimes.

9. Displaced persons

51. A recent census undertaken by UNHCR disclosed that there are still approximately 400,000 refugees and 200,000 IDPs living in the Federal Republic of Yugoslavia.[9] For many, their prospects for immediate or longer-term return to their places of former residence remain bleak. The Special Representative recognizes that the presence of such a large number of displaced persons places a heavy burden, in humanitarian and financial terms, on the host State and the international humanitarian agencies supporting them. Nonetheless, he notes that any durable solution for displaced persons of the region - whether this involves local integration or return - must be predicated on enjoyment by everyone of the full spectrum of civil, political, economic, social and cultural rights and in full conformity with the principle of non-discrimination.

52. On the situation of IDPs, the Special Representative expresses his deepest concern that the present climate of violence and insecurity for ethnic Serbs and other ethnic minorities in Kosovo means that few people are able to return to their homes. He calls on UNMIK and KFOR to take all necessary steps to protect the physical safety and human rights of all those who choose to return to Kosovo. For those IDPs who cannot reasonably return to Kosovo, the Special Representative urges the Republic of Serbia to ensure their full and prompt integration. He also urges donors and international humanitarian agencies to maintain effective programmes for the support and protection of IDPs, notwithstanding the transitional phase from humanitarian to development activities.

53. He expresses his particular concern about the situation of those living in unofficial collective centres around Belgrade. Not having official residence documents ("green cards"), such persons may have difficulty in securing entitlements to basic social rights and services, including secure accommodation, utilities and financial assistance. The Special Representative calls on all relevant national authorities and international agencies to examine the special situation of IDPs in Serbia in order to ensure their full enjoyment of economic and social rights - in particular, those contained in article 11 of the International Covenant on Economic, Social and Cultural Rights and principle 18 of the Guiding Principles on Internal Displacement - as well as their civil and political rights.

54. On the situation of refugees, the Special Representative welcomes steps taken by the Federal authorities to amend the Citizenship Act of 1997 to allow refugees to obtain dual citizenship. He also welcomes and encourages the Government to conclude bilateral arrangements with the Governments of Bosnia and Herzegovina and Croatia that will regularize the legal status and secure the human rights of all refugees in the region. The Special Representative urges others States, including Bosnia and Herzegovina and Croatia, to take

reciprocal steps to allow the prompt and full restoration of human rights to refugees, including their housing and property rights. He also urges the Serbian and Federal authorities to disclose and release all official registry records removed from Croatia and Bosnia and Herzegovina during the conflict that may verify the legal status and property rights of refugees now residing in the Federal Republic of Yugoslavia

10. Freedom of expression and the media

55. The Special Representative recognizes the vast improvement in the freedom of expression and the situation of the media in Serbia since October 2000. He is not aware of any journalist imprisoned, media fined or equipment seized, as was frequently the case before October 2000.

56. In the print media, the Special Representative welcomes the repeal by the Serbian Parliament in February 2001 of the oppressive Information Law, 1998. By way of compensation to the owners and editors of the print media who had been punished under the Law, the Government has returned approximately 11.4 million dinars (out of a total of 31 million dinars) in fines. However, whilst the abolition of the Serbian Ministry of Information, removes a form of State censorship of the media, it has left something of a vacuum as no one in Government has been designated to deal systematically with the transitional aspects of the media. Until appropriate laws regulating the media are adopted, the media may continue to be exposed to political pressures, their independence questioned and their contribution to the processes of democratic transition reduced.

57. The Special Representative welcomes these positive developments but expresses concern over two incidents involving government demands for disclosure of confidential sources in cases of public interest. The first, in July 2001, involved a request that editors (journalists) disclose their confidential sources for published articles regarding the "Gavrilovic case", and the second, in November 2001, concerned the "Hague list of policemen".

58. The Special Representative also recognizes that the greatest threat to independent journalism and freedom of the media in Serbia comes from individuals or groups involved in some form of criminal activity and who are threatened by media exposure. A journalist in Jagodina, Milan Pantic, investigating crime and corruption in his home town, was killed on 11 June 2001 after receiving numerous death threats. Slavko Curuvija, owner of Evropljanin magazine and Dnevni Telegraf newspaper, was killed by unknown gunmen in front of his house in April 1999 and the case remains unresolved. These cases should be investigated and the perpetrators held accountable.

59. In the electronic media, the draft law on public broadcasting is still to be adopted; this has created a situation of uncertainty in the allocation of frequencies. Over 1,000 radio and television stations are broadcasting, many of them operating without valid licences. This makes development and planning almost impossible and prevents the stations from seeking stable sources of finance. In the absence of an independent body overseeing the functioning of the State Television (Radio Television Serbia-RTS), as foreseen by the draft law, and the abolition of subscription fees, previously appended to electricity bills, the RTS is largely dependent on the Government's funds, and thus less likely to be critical of the authorities. The municipal radio

and television stations, established and owned by the local municipalities, are also in the category of State media and cannot be privatized without prior consent of the local governments. This dependency on local governments may limit the function of an independent media to serve as guardians of public interests.

C. Particular situation in southern Serbia

1. General situation

60. In May 2001, an agreement was reached between the Federal and Serbian authorities, led by Serbian Deputy Premier Nebojsa Covic, NATO and representatives of the ethnic Albanian community, which brought an end to most of the violence in the Presevo valley region of southern Serbia (the municipalities of Presevo, Bujanovac and Medvedja). The ethnic Albanian Liberation Army of Presevo, Medvedja and Bujanovac (UCPMB), which had been in conflict with the Yugoslav security forces, disbanded and disarmed in return for an amnesty from prosecution. The Ground Safety Zone (GSZ), which restricted the presence of Yugoslav security forces along the boundary between Serbia proper and Kosovo, was relaxed to allow the gradual return of Serbian police and the Yugoslav army into the area.

61. The Special Representative was encouraged by the achievement of this important agreement and the successful implementation of the initial phases. Although the situation remained generally stable through the last months of 2001, the Special Representative is nevertheless concerned that several fresh violent incidents with an apparently political motivation have occurred in the region since August 2001. The perpetrators of the incidents, which include the killing of two police officers in August, are unknown, but two new ethnic Albanian armed groups have claimed to be active in the area. One has claimed responsibility for the killing of the police officers.

2. Implementation of the peace plan for southern Serbia

62. Beyond the agreements on the disarmament of the UCPMB and the relaxation of the GSZ, the core of the agreement on a peaceful solution to the conflict was a plan presented by the Government for a series of measures to improve the social, economic and political rights of ethnic Albanians in southern Serbia (the "Covic Plan").

63. The Special Representative observes that respect for human rights has improved substantially in terms of the behaviour of police. Since June 2001, complaints of ill-treatment by police of ethnic Albanians in southern Serbia have been infrequent in comparison with the period of conflict. The Code of Criminal Procedure and other laws and regulations have generally been respected in the execution of police operations. Other measures designed to contribute to sustaining this momentum are in process. For example, some 100 police officers, including ethnic Serbs, ethnic Albanians and Roma, have been trained and deployed as part of a new multi-ethnic police force for the three municipalities. A further 300 officers are expected to be trained and deployed in the course of 2002. The training, carried out under the auspices of the OSCE, includes elements on the application of international human rights standards and police ethics.

64. The Special Representative is nevertheless concerned that a substantial number of other police officers are present in the region, mainly on rotation from other parts of the country, who have received no additional human rights-orientated training. He is also concerned that few visible actions have been undertaken to resolve complaints of human rights violations outstanding from the period of conflict.

65. The Special Representative is concerned that progress on the implementation of the plan has been limited and that the main areas of progress have so far been confined to the security situation and infrastructural improvements. More visible progress needs to be made in fulfilling other commitments made under the Covic Plan. These relate to the reintegration of ethnic Albanians into employment in the public service sector and the local economy and the more effective representation of ethnic Albanians in municipal executive bodies. These positive measures are necessary to correct past discrimination in employment and education practices and to redress the loss of employment by many ethnic Albanians who fled during the armed conflict in 1999. Delays in holding new municipal elections and adjusting electoral units to better represent the ethnic make-up of the population are impeding dialogue between all those concerned and threatening the implementation of the broader plan and with it, respect for human rights.

3. Displaced persons

66. UNHCR estimates that some 15,000 ethnic Albanians fled from the three municipalities during the Kosovo crisis in 1999 and the conflict that followed in the Presevo valley. Another 3,000 or more fled immediately prior to the return of the Yugoslav army to the GSZ. Most sought refuge in Kosovo. The Special Representative notes with satisfaction that some 5,300 persons returned since the implementation of the Peace Agreement commenced. However, most of the returnees have gone back to Kosovo for the winter because of the poor conditions of their houses or village infrastructure. The Special Representative is hopeful that they will consider returning again in the spring, but is concerned that this will depend on further progress in implementing the Covic Plan.

4. International support

67. The Special Representative notes that both the Covic Plan and representations by the ethnic Albanian community call for a substantial contribution from the international community in terms of monitoring and political and financial support. He is of the view that a continued and active presence of United Nations agencies, such as the OHCHR and other humanitarian and development-based agencies, will be important in ensuring proper implementation of the Covic Plan over the short to medium term.

5. Ongoing human rights violations

68. The Special Representative is concerned that a number of complaints of human rights violations by police were recorded in the last months of 2001. The most serious incident occurred on the night of 26 October when three ethnic Albanians were stopped by unidentified police officers near the village of Strezovce. The victims were searching for lost cattle. Allegedly, the three men were held for one hour in the open during which they were kicked,

punched, beaten with rifle butts and otherwise ill-treated. The ill-treatment ceased only when a local police officer came upon the scene and intervened. Two of the victims needed hospital treatment for their injuries. The Special Representative urges the authorities to make further efforts to avoid the repetition of such incidents and to strengthen the formal complaints mechanism through which such incidents can be reported and investigated. The Special Representative notes that the perpetrators were apparently from the police units deployed in the region from other parts of the country. He therefore stresses the need for additional attention to the need for human rights training and effective control of police officers in the region who currently fall outside of the multi-ethnic police project.

D. Situation in Kosovo

1. General situation

69. The Special Representative notes the significant developments in the process of self-governance as anticipated by Security Council resolution 1244 (1999) following the calm and orderly election for a Kosovo-wide legislative Assembly on 17 November 2001. The Special Representative particularly welcomes the progress UNMIK and OSCE have made in engaging the Kosovo Serb community and other minorities in the electoral process. In this regard, the Special Representative welcomes the signing on 5 November 2001 of the "Common Document" between UNMIK and the Federal Republic of Yugoslavia and encourages further constructive and practical dialogue between the two authorities.

70. The Special Representative welcomes the establishment of the Provisional Institutions of Self-Government. He emphasizes that these institutions, facilitated and advised by UNMIK and other actors in the international community, must operate within the bounds prescribed by resolution 1244 (1999) and the Kosovo constitutional framework.

71. The first organized return to Kosovo of ethnic Serb IDPs - a small group of 54 individuals to an isolated Serb village - took place in August 2001, but the current security situation does not permit any larger-scale return programmes. The Special Representative underlines the importance of the right of all people to return to their homes and calls on the international community and the political leaders in Kosovo to facilitate the return of Albanians, Serbs and members of other minority communities to their homes in Kosovo. The Special Representative notes the recent establishment of an Office of Returns and Communities with a director under the direct supervision of the Special Representative of the Secretary-General and encourages UNMIK and the Provisional Institutions of the Self-Government to make further efforts to ensure a sustainable process of return.

72. The Kosovo Ombudsperson has become actively and visibly engaged in addressing human rights problems that fall under his mandate. The Special Representative calls on all officers within UNMIK, KFOR and the Provisional Institutions of Self-Government to cooperate fully with the Ombudsperson, including the implementation of his recommendations and irrespective of whether his views are legally binding.

73. Generally, the Special Representative remains concerned by the slow progress in three key areas of relevance to his mandate: (i) the human rights situation and physical protection of ethnic minorities in Kosovo; (ii) the quality of the rule of law; (iii) the extent to which human rights standards and practices are integrated into the work of UNMIK and that of KFOR.

2. Situation of ethnic minorities

74. The Special Representative remains deeply concerned about the physical security and human rights of members of the Serb and other minority communities. Most of the estimated 100,000 Serbs remaining in Kosovo live in enclaves protected by heavily armed KFOR soldiers with little or no freedom of movement. Many do not enjoy full, effective and safe access to health care, social services, schools or employment opportunities.

75. Although violence against minorities has not notably increased over the last few months, sporadic attacks continue to occur. For example, in November 2001, a Serb woman, Milica Mirosavljevic, aged 60, was killed and her husband, Stojadin, aged 70, seriously wounded when unknown attackers opened fire and threw a hand grenade at them in Obilic (10 kilometres from Pristina). Other violent incidents include an attack on Kosovo Serb journalist and RTS employee Rados Radonjic, on 20 October 2001.

76. Both KFOR and UNMIK continue to face serious challenges in identifying, arresting and fairly judging those involved in ethnically based crimes. The existing climate of intimidation and insecurity poses a major threat to the return of displaced people to Kosovo from Serbia proper and to the longer-term prospects for and reputation of Kosovo as a tolerant and multi-ethnic society.

77. The Special Representative considers the general level of violence in Kosovo society unacceptably high. This in turn has consequences for the minorities as well as the general population at large. The killing of Kosovo Albanian journalist Bekim Kastrati of Bota Sot newspaper, on 19 October 2001 and an attack on the president of Obilic municipality and local leader of the League for a Democratic Kosovo (LDK) party on 2 November 2001 are of particular concern since these attacks strike at the very core of civil society.

78. The development and implementation of an UNMIK coordinated policy on minority issues in Kosovo is essential for the successful implementation of resolution 1244 (1999). In this regard, the Special Representative urges all concerned parties to support the newly established Advisory Board on Local Communities to the Special Representative of the Secretary-General. The Advisory Board is designed as a high-level representative body with responsibility to provide advice and recommendations to the Special Representative of the Secretary-General on the next steps to be initiated to promote returns in conditions of safety and dignity. The Special Representative welcomes the appointment of the new Principal Deputy to the Special Representative of the Secretary-General who acts as Chair of the Advisory Board on Local Communities.

79. While physical security remains an overriding concern, the serious economic and social situation is another factor affecting the minority communities. The situation of the Bosniak and Gorani communities in Prizren area is generally worsening. Many families continue to leave due

to the lack of employment, lack of access to the education and lack of basic facilities such as potable water, electricity and telephone lines. According to UNHCR, it is estimated that between June and September 2001 at least 471 Bosniak individuals departed from Prizren for destinations outside of Kosovo.

3. Rule of law

Judicial system

80. The Special Representative welcomes the appointment of the new director of the UNMIK Department of Judicial Affairs (DJA), the work of the Judicial Investigation Unit responsible for analysing and evaluating the functioning of the courts and public prosecutors' offices and investigating complaints against judges and prosecutors, and the proposal to increase the number of international judges and prosecutors from the current 15 to over 30 in 2002.

81. The increased number and quality of judges will be crucial if deficiencies in the prosecution of criminal cases related to attacks on minorities are to be adequately addressed (see above section on minorities).

82. Also of serious concern are similar deficiencies relating to the trafficking in persons and other sexually related crimes. Despite the relevant laws being in place, specifically UNMIK regulation 2001/4, the judiciary is generally inefficient in applying the mechanisms and remedies envisaged therein. The Special Representative notes with concern that these inefficiencies are compounded by the fact that a Victim Assistance Coordinator has not yet been appointed as required by the regulation. This greatly limits the assistance and protection available to victims of such crimes.

83. Women are trafficked for sexual exploitation, both within Kosovo and from Kosovo. It is estimated that there are currently 85 brothels in Kosovo where women and young girls are forced into prostitution. Disturbingly, it is reported that approximately 10 per cent of all known cases of trafficking between February 2000 and August 2001 were of young girls under 18 years of age (typically 14-17 years old). Services available for Kosovo victims of trafficking who are rescued by the police are still very limited. Whilst the Centres for Social Work (CSW) are mandated by law to protect children, most social workers still do not have enough knowledge and skills to deal with such very sensitive protection issues. The Special Representative urges that preventive activities be developed and that such programmes specifically target children from the most marginalized groups of the society, as these are most likely to be victims of criminal groups involved in trafficking.

84. The DJA is facing major challenges building a post-conflict legal system and the Special Representative commends UNMIK for creating a court system that is now reasonably functional. Nonetheless, major problems remain. The judiciary has few judges or prosecutors from ethnic minorities because their physical safety cannot be guaranteed in the present climate of insecurity. In light of this, the Special Representative welcomes the establishment of the Minority Affairs Unit in the DJA with a view to creating the capacity to handle minority issues.

85. UNMIK has taken a number of concrete steps to redress these challenges. These include the hiring of international judges and prosecutors as mentors for ethnic Albanian judges and the creation of a special jurisdiction for ethnic crimes that would place these cases largely in the hands of international judges and prosecutors. UNMIK has also placed the judiciary and the police in a new administrative structure headed by a Deputy Special Representative of the Secretary-General in order to bring greater coordination and coherence to legal reform. The Special Representative welcomes these reforms and hopes these will lead to improvements in the conduct of due process.

Detention by KFOR and/or executive order of the Special Representative

86. The Special Representative is concerned about practices in which persons are detained either pursuant to an executive order of the Special Representative of the Secretary-General or by KFOR under the general mandate and terms of engagement given by Security Council resolution 1244 (1999). In the former cases, some orders have been applied to criminal suspects who have been ordered released by a court or prosecutor. In these cases, executive detentions by the Special Representative of the Secretary-General are justified on the basis of security imperatives that involve sensitive intelligence information on extremist and organized criminal groups that cannot be shared with a court - or cannot be used as evidence in a trial - or must be invoked because of deficiencies in the normal criminal court process itself.

87. The Special Representative therefore welcomes recent steps taken by UNMIK to improve the legal basis on which executive orders to detain are made, including the commissioning of an independent detention review committee to recommend to the Special Representative of the Secretary-General whether the evidence justifies continued detention. The Special Representative notes that this remains, nonetheless, an extrajudicial measure and recommends that these decisions be returned to the judiciary, with appropriate legal safeguards, as soon as possible.

88. The situation of military detentions by KFOR is based on rather more obscure legal grounds. KFOR routinely arrests and detains individuals on an extrajudicial basis - mostly ethnic Albanians suspected of fighting in the former Yugoslav Republic of Macedonia and southern Serbia - citing resolution 1244 (1999), the Kumanovo Military Technical Agreement with the Federal Republic of Yugoslavia and customary international law as the legal sources of KFOR authority for detentions. The Special Representative fully recognizes the difficult security environment prevailing in Kosovo, not least the risk of ethnic Albanian extremism and insecurity along the administrative boundary with southern Serbia and the international border with the former Yugoslav Republic of Macedonia.

89. The Special Representative appreciates recent steps taken by KFOR towards a more transparent detention policy, principally its decision to replace the classified detention directive known as FRAGO 997 with an unclassified detention directive that is available to members of the international community. This latter document is known as COMKFOR detention directive 42, dated 9 October 2001.

90. He remains concerned, nonetheless, that KFOR "military holds" (i.e. arrests and detentions) may be incompatible with basic human rights principles and the rule of law. The relevant criteria under directive 42, specifically, the existence of a "threat to KFOR" or the "safe and secure environment" of Kosovo, are too vague and undefined to provide an adequate and transparent framework for detention. It gives overly broad discretion to KFOR to detain. Further, the provisions of directive 42 - stipulating that "the fact that a person may have information of intelligence value by itself is not a basis for detention" and that "not all criminal activity constitutes a threat" under resolution 1244 (1999) - raise questions concerning the need for KFOR detention practices in view of the fact that given that the remaining grounds for detention are adequately covered by existing legislation on terrorism, illegal border-crossing and organized crime. In addition, the Special Representative remains concerned that persons detained by KFOR do not have a guaranteed right of access to defence counsel in accordance with the directive since detainees may have access to a lawyer only at their own expense. This is of particular concern in cases where juveniles are detained.

91. The Special Representative urges KFOR to review current practices to address these concerns. If such practices are necessary to meet the exigencies of the situation then appropriate legal derogations should be adopted. In view of the fact that Kosovo's criminal law now includes regulations on terrorism, illegal border-crossing and organized crime and that the presence of international judges and prosecutors within the normal court judicial process should improve the handling of these cases, there is now a reduced need for such exceptional measures to be employed.

4. Human rights within UNMIK

92. The Special Representative remains concerned that human rights principles are not sufficiently integrated into the process by which legislation and administrative procedures are promulgated and implemented. There seems to be some uncertainty within UNMIK as to whether its activities as a transitional government are governed by international human rights norms. UNMIK regulation 1999/24, which establishes the applicable law in the province, is unclear on this question. The new constitutional framework for Kosovo enumerates an exhaustive list of human rights instruments that are deemed binding in Kosovo, but it inexplicably excludes the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Representative emphasizes the universal, inalienable and indivisible character of all human rights and urges the Special Representative of the Secretary-General to ensure that these rights form part of the applicable law in Kosovo. He also notes that a number of the international instruments cited within UNMIK regulations and the Kosovo constitutional framework, including the Universal Declaration of Human Rights, are incorrectly named.

93. The Special Representative repeats his earlier concerns that the post of Senior Human Rights Adviser to the Special Representative of the Secretary-General has been unfilled since February 2000, despite the fact that this post was an important element in the Secretary-General's report to the Security Council on UNMIK in July1999 (S/1999/779). He renews his recommendation for the appointment of a Senior Human Rights Adviser who would ensure a proactive approach on human rights in all UNMIK activities and would ensure the compatibility of regulations issued by UNMIK with international human rights standards.

94. The Special Representative also urges the Special Representative of the Secretary-General to reconsider existing law-making practices and to ensure that the Office of the Legal Adviser establishes appropriate mechanisms for broader-based consultations on draft regulations. This would better ensure that regulations comply with human rights standards, as well as the Kosovo constitutional framework. He also encourages greater transparency and public participation in governing structures in Kosovo - in particular, members of Kosovo civil society must be included in a broader way in the formation of policy and the drafting of regulations that pertain to human rights issues.

E. Situation in Montenegro

1. General situation

95. Uncertainty about the future constitutional status of the Republic of Montenegro continues to hamper any real progress to reform the institutions of Government, including reforms that are necessary to improve the promotion and protection of human rights in Montenegro. At the same time, the degree of cooperation between Federal authorities and those within the Republic of Montenegro remains poor and, in some areas, non-existent. Intensive discussions are now taking place between various political parties to define the basis and timing of a referendum on independence which, if it takes place, does not seem likely before the spring of 2002. A major political debate continues over the form of the referendum and the percentages of votes needed to validate and approve the poll. Whilst the first draft referendum law allowed for a simple majority of those who turn out to vote to decide the referendum, a paper published by the Office for Democratic Institutions and Human Rights of the OSCE in November 2001 expressed a clear preference for a higher standard that would require a minimum turnout of half of all eligible voters.

96. As a result of these interrelated factors, any real progress in undertaking essential reform of the institutions of Government and generally improving the socio-economic situation within the Republic has been extremely slow.

97. The Special Representative recognizes that some reforms may not be capable of completion until greater certainty is reached on broader constitutional questions but is convinced, nonetheless, that there are practical areas of reform relating to human rights that can be successfully undertaken now, even within this climate of uncertainty. Broadly, reforms are required to more clearly demarcate and separate the constituent elements of Government - executive, legislative and judicial. Specific areas for attention are addressed below.

2. Right to life

98. The Special Representative notes with concern the continued application of capital punishment by the courts in Montenegro, although there has been a moratorium on executions since 1980. Most recently, on 11 October 2001, the High Court in Podgorica sentenced two suspects to death for killing a truck driver after stopping him using police uniforms and robbing him at a gunpoint.

99. The Constitution of the Republic of Montenegro (art. 21), declares that "human life is inviolable", but still provides for capital punishment for "the most serious criminal offences". Accordingly, the current Criminal Code of the Republic (art. 30), envisages death as the heaviest sanction for aggravated murder. Montenegro has established a working group in charge of amending the Criminal Code of the Republic with the aim of abolishing the death penalty. The Special Representative urges the working group to fulfil its tasks as soon as possible, especially in view of the declared policy of Montenegrin authorities to harmonize the Republic's legislation with the existing European standards.

3. Right to a trial within a reasonable time or release pending trial

100. The Special Representative reiterates his concern for the continuing delays in the prosecution of Nebojsa Ranisavljevic, who was charged with war crimes against civilians arising from the "Strpce incident", wherein a number of civilians were abducted from a train on 27 February 1993 and whose whereabouts remain unknown. Mr. Ranisavljevic has been held in pre-trial detention since October 1996 and the High Court of Bijelo Polje has been unable to conduct the trial due to difficulties in amassing evidence. In its latest session, on 6 and 7 December 2001, the Court failed to move the case forward "due to the absence of summoned witnesses". In the meantime, Mr. Ranisavljevic began his sixth year in prison without trial.

101. The Special Representative recognizes the seriousness of the charges faced by the accused, but is of the view that the present delays have led to an unacceptably prolonged period of pre-trial detention. He calls on the relevant judicial authorities to prosecute this case without further delay and in accordance with international standards of due process.

4. Freedom of the media and the right to freedom of expression

102. The Special Representative notes that the Law on Public Information of 1998 contains provisions that promote a free and independent press and the freedom of expression. However, the Montenegrin Criminal Law contains criminal sanctions for cases of libel and slander that seriously limit the freedom of expression in practice. In his report to the fifty-sixth session of the General Assembly, the Special Representative expressed his specific concerns about a court decision of September 2001, wherein Vladislav Asanin, editor-in-chief of the local Dan newspaper, was sentenced to five months' (suspended) imprisonment and two years' probation for reprinting allegedly defamatory articles from a foreign magazine. He is therefore concerned to note that a second criminal case - filed by the President of the Republic of Montenegro but in his personal capacity and by way of private prosecution - has been brought against the same journalist for the same allegedly defamatory publication. Mr. Asanin was tried and found guilty by the First Level Court of Podgorica and was sentenced on 6 December 2001 to three months in prison for defamation (article 76, paragraph 3, of the Criminal Law of the Republic of Montenegro).

103. Without commenting on the specific facts of this case, which remain sub judice, the Special Representative notes that national laws limiting the right to freedom of expression - as contained in article 19 of the International Covenant on Civil and Political Rights - may

impose restrictions necessary "for the respect of the rights and reputation of others", but that these must be limited, necessary in a democratic society and proportionate to the legitimate aim pursued. The Special Representative believes that in the absence of particularly aggravating circumstances, such cases ought properly be dealt with by the civil law - with an appropriate award of damages - rather than through a criminal law process.

104. He recommends that early steps be taken to abolish all legal provisions that impose custodial penalties for slander and defamation, in favour of less draconian sanctions. He also recommends the abolition of the special criminal law protection given to public figures and symbols listed in article 82 of the criminal law of the Republic of Montenegro. He further suggests that in drafting the law on electronic media, the authorities take into account relevant international standards on the freedom of expression.

5. Protection of minorities

105. The Special Representative notes that the current legislation in Montenegro is generally in accordance with international standards relating to rights of persons belonging to ethnic and religious minorities. He also notes, however, that minorities in Montenegro continue to be underrepresented in the civil service, particularly at its middle and lower levels. In this respect, the Special Representative appeals to the authorities to speed up the implementation of plans related to the appointment of ethnic minority representatives as chiefs of police and other responsible posts in municipalities and communities where those minorities live.

106. He notes with concern several instances where the media in Montenegro had incited animosity against minority groups. For instance, the armed robbery and the killing of woodcutters in the north of Montenegro earlier in 2001 prompted a number of anti-Albanian articles. The murders were cited falsely as evidence that "Albanian terrorists" crossing the border from Kosovo and Albania were plotting a rebellion against Montenegro. The Special Representative calls on journalists to observe their professional duty to report truthfully and to avoid any use of discriminatory terms and prejudicial or derogatory stereotypes.

6. Trafficking in human beings

107. Trafficking in human beings, including trafficking in women and illegal immigrants, continues to be a human rights problem in Montenegro. The Government, especially the Ministry of the Interior, does take some measures but they are still not enough to deal effectively with this problem. The adoption in early 2001 of a National Plan of Action against Trafficking, the appointment of a national governmental coordinator in charge of trafficking issues and the creation of an inter-agency task force within the Government to combat trafficking are positive developments. Those new structures and mechanisms should be encouraged and assisted in their further activities.

Notes

[1] "[W]e do not believe the system of internal control as it is currently administered is adequate to protect the public assets of Bosnia and Herzegovina ... ." Office of the High Representative Anti-Fraud Department Bosnia and Herzegovina, Special Audit Report Summary, June 2001, located at http://www.ohr.int/ohr-dept/afd/audits/default.asp?content_id=5538#1 Further, the Audit Office of the Institutions of Bosnia and Herzegovina found, inter alia, that the Ministry of Foreign Trade and Economic Relations failed "to establish [an] efficient internal system of control over budget revenues and expenditures" and that the financial statements of the Ministry of Foreign Affairs "do not present a fair and true view of operations during the year". Reports are located at http://www.revizija.gov.ba

[2] The implementation ratio equals the total number of repossessions/total number of claims, expressed as a percentage.

[3] Source: Statistics on the Implementation of the Property Laws in Bosnia and Herzegovina, published jointly by the United Nations High Commissioner for Refugees, the Office of the High Representative, the Organization for Security and Cooperation in Europe, the United Nations Mission in Bosnia and Herzogovina, and the Commission for Real Property Claims of Displaced Persons and Refugees, 31 October 2001.

[4] Agreement on the Manner and Procedure of using Health Care Service of Insurees in the Territory of Bosnia and Herzogovina outside the Territory of the Entity, including Brcko District, in which they are Insured, 5 December 2001.

[5] For more specific details about these allegations of police ill-treatment see Web site of the Humanitarian Law Centre, www.hlc.org.yu

[6] Ibid.

[7] The UNMIK Bureau for Detainees and Missing Persons estimates that there are approximately 3,500 ethnic Albanian and 1,500 ethnic Serb and other minority missing persons.

[8] The estimates vary between 464 and 571 because of different methods of analysing the remains.

[9] Approximately 385,000 refugees are from new States of the former Yugoslavia residing in Serbia and 15,000 in Montenegro. Most IDPs are ethnic Serbs and other ethnic minorities displaced from Kosovo during and since the conflict in 1999.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in the former Yugoslavia

Report of Mr. José Cutilero, Special Representative of the Commission on Human Rights on the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia

Addendum

Update, covering the period December 2001-February 2002

GE.02-11497 (E) 210302

Addendum

Bosnia and Herzegovina

1. The Special Representative undertook his second trip to Bosnia and Herzegovina from 10 to 15 February 2002, visiting the Federation and the Republika Srpska. He met with members of the Government of Bosnia and Herzegovina and the Entity Governments; the High Representative; senior officials of international organizations; and interlocutors from civil society and domestic human rights institutions.

2. The return of refugees and displaced persons in 2001 was greater than in previous years. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 2001 saw the highest number of returns since the signing of the Dayton Peace Agreement, with over 92,000 registered minority returns, including 47,156 Bosniacs, 34,189 Serbs and 9,587 Croats. It is predicted that this trend will extend into 2002. As this process continues, the Special Representative underscores the need to protect the rights of persons who voluntarily choose not to exercise their right to return. It is noted that there is no mechanism to track the number of persons who return to repossess and sell their properties. This might be indicative of the extent to which returns are permanent.

3. The Special Representative takes note of the fact that the property legislation implementation rate in the Republika Srpska as at the end of 2001 is a mere 30.64 per cent and at the end of 2000 it was 13.21 per cent. Although less than one third of the problem has been solved, in the past year the Government has achieved more than has been achieved in the previous four years.[1] Both Entities have much to do to fulfil their legal obligations, as the Federation implementation rate has reached only 49.40 per cent.[2] Nonetheless, the Special Representative welcomes the stated intention of the President of the Republika Srpska to have the Republika Srpska rate reach at least 50 per cent by the end of this year.

4. The increase in returns in Bosnia and Herzegovina further highlights the contrasting non-return of Serb refugees to their places of origin in Croatia. After his visit to Banja Luka, the Special Representative called upon the Republic of Croatia to redouble its efforts to remove obstacles to refugee return or redress, which would also serve to accelerate the return process inside Bosnia and Herzegovina. Statistics on the number of Croatian Serbs currently residing in the Republika Srpska are still in dispute. Given that registration is a voluntary process, there is reason to believe that many people feel that registration is a pointless exercise.

5. The Special Representative notes that property return is a necessary but not sufficient condition for voluntary and sustainable return. It is encouraging that interlocutors in the Government and civil society indicate some understanding of the State's responsibility for ensuring the enjoyment of all rights, as being indivisible and interrelated. Needed improvements in education, social security and health protection would promote, inter alia, the sustainability of returns. Economic regeneration is a priority and the Government should ensure the involvement of all relevant actors in the development of the Poverty Reduction Strategy Paper.

6. In the area of health care, the Entities must ensure implementation of the Agreement on the Manner and Procedure of Using Health Care Service Insurees in the Territory of BiH outside

the Territory of the Entity, including Brcko District, in which they are insured. Despite the signing of this agreement in early December, returnees still have no access to health care in their return area.

7. The Special Representative welcomes the opening of the Sarajevo office of the Victims and Witness Section of the International Criminal Tribunal for the Former Yugoslavia, and takes this opportunity to point out that victims and witnesses include many extremely vulnerable persons who have fallen through the social safety net and have no access to their social and economic rights. This often intersects with the emotional trauma and connected social problems experienced by the families of the up to 30,000 missing persons from Bosnia and Herzegovina.[3]

8. While in the Republika Srpska, the Special Representative was provided with statistics for the level of minority representation in the police force which differ from those released by the United Nations Mission in Bosnia and Herzegovina (UNMIBH). The Special Representative would emphasize, despite any representations made, that the level of minority policing in either Entity remains only slightly more than negligible, and few if any minority officers are in positions of command or control.

9. Progress in the area of the judiciary remains slow. There is a need to develop an effective mechanism to hold judges accountable to high professional and ethical standards and to reduce the massive backlog of cases, thus re-establishing public confidence in the judiciary. The Special Representative recalls his statements in his report to the Commission and emphasizes the need for the governments, in conjunction with the Independent Judicial Commission, to push forward to ensure the creation of an independent, effective and non-discriminatory judicial system.

10. Trafficking in persons remains a serious problem in Bosnia and Herzegovina, making the recent adoption of the National Plan of Action timely. Priority must be given to implementing this initiative. Moreover, within certain ministries there appears to be insufficient comprehension of what comprises trafficking in persons and thus of how the problem should be addressed. Evidence suggests that this dearth of comprehension translates into the criminal prosecution of the victims of trafficking rather than of those who are responsible for their being trafficked.

11. The Special Representative commends the Bosnia and Herzegovina authorities for their determination to join in the international effort to fight terrorism. However, concerns have been expressed over the manner in which suspected terrorists have been stripped of their legal status and removed from the country in recent and controversial cases. In his meetings with government officials of both the State and Federation, the Special Representative received assurances that any future removal of citizenship would follow strict legal procedures and that full rights of appeal would be preserved.

12. The Special Representative would like to congratulate Bosnia and Herzegovina on the positive vote taken by the Council of Europe Parliamentary Assembly to allow the country to accede to the Council; he will observe closely the adherence by Bosnia and Herzegovina to the requirements laid down for it.

13. Whilst he was in Bosnia and Herzegovina, the Special Representative was informed by government officials of the State and both Entities that constitutional reform should be completed within the next few months, bringing the Entity constitutions into line with the Constitutional Court's Decision on Constituent Peoples. The Special Representative hopes that these statements will be realized; he will revisit the issue on his next mission.

14. Despite the advances made in the area of return and the promising statements made by the governments, the Special Representative remains cautious in his assessment of progress, especially when looking at long-term sustainability. Much has been done, but much more must be done.

15. Finally, the Special Representative welcomes the undertaking Bosnia and Herzegovina has made to commence reporting to the treaty bodies in 2002.

Federal Republic of Yugoslavia

16. The Special Representative undertook his second visit to the Federal Republic of Yugoslavia (FRY) between 31 January and 10 February 2002, visiting Montenegro, Serbia and Kosovo. He met with senior members of the FRY, Republic of Serbia and Republic of Montenegro governments; senior officials of the United Nations Mission in Kosovo (UNMIK), the OSCE and KFOR in Kosovo; and local political and community leaders and representatives of international organizations and local NGOs dealing with human rights issues throughout the region.

Serbia

17. In Serbia, the reform process continued to advance slowly, still hampered by the ongoing inability of Serbia and Montenegro to resolve the status of Montenegro within the federal structure and political disagreements among the principal members of the governing DOS coalition. The opening of the war crimes trial of former President Slobodan Milosevic in The Hague in February 2002 intensified tension over FRY cooperation with the International Criminal Tribunal for the Former Yugoslavia. And in a troubling reminder that Serbia's transition from the Milosevic era remains fragile, two grenades exploded in front of the headquarters of the party of FRY President Kostunica on 4 March 2000.

18. On a positive note, the Chamber of Citizens of the FRY Parliament adopted the Law on Protection of National Minorities on 25 February 2002. One notable achievement of the new law is that, for the first time in the history of Yugoslavia, the Roma are recognized as a national minority. New laws governing labour, autonomy for Vojvodina, and local self-government were also passed. In addition, the FRY ratified the Optional Protocol and acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, both important indications of the interest of the Government in incorporating all international human rights standards in domestic law. Regrettably, however, several other important laws, including laws to regulate the media and the Law on Cooperation with the International Criminal Tribunal for the Former Yugoslavia, are still in the drafting process.

19. Although the Serbian Ministry of the Interior has taken some positive steps to improve the behaviour of the police, particularly in southern Serbia, allegations of ill-treatment continue to surface. For example, in February 2002, police officers were accused of beating an 18-year old male in Novi Sad who had been sitting with friends on the top of a former fallout shelter, and a young man in Vrsac for allegedly participating in a car theft. The Special Representative is particularly concerned that high-ranking officials of the Ministry of the Interior have remained silent in these cases and do not appear to have initiated any internal or external investigations.

20. The unresolved situation of more than 400,000 refugees and 230,000 internally displaced persons (largely ethnic minorities from Kosovo) in the Federal Republic places a heavy burden on the State and has both a humanitarian and human rights dimension. Despite the many positive developments in the country, the Special Representative urges all actors, including international donors, to maintain their focus on and support for these vulnerable groups, particularly ethnic Serbs and Roma from Kosovo, whose present plight remains precarious and their long-term status unresolved.

21. In southern Serbia, the Special Representative was pleased to see renewed commitment on the part of the governments of Serbia and FRY with regard to confidence building vis-à-vis ethnic Albanian leaders. A United Nations agency assessment of progress on the commitments made by the FRY to the ethnic Albanian community, released in January 2002, identified a range of positive achievements, as well as several areas where improvements are necessary, including the need for more transparency in the processing of complaints of human rights violations and better cooperation between the authorities and the international community to achieve reintegration of ethnic Albanians into State service, the economy and society (to address past and current discrimination). An initiative by the OSCE FRY mission to create a Serb-Albanian round table involving government representatives and political representatives from the ethnic Albanian community helped to initiate new discussions. Deputy Prime Minister Covic welcomed the United Nations and OSCE initiatives and also met former commanders of the Presevo, Medvedja and Bujanovac Liberation Army (PMBLA) and ethnic Albanian political representatives in connection with the issue of amnesty for former PMBLA members. The promise not to prosecute former UCPMB members who had voluntarily given up their arms and uniforms before the June 2001 deadline was repeated in a new letter addressed to the North Atlantic Treaty Organization (NATO) by Dr. Covic. While the reiteration of the amnesty was an important confidence-building step, the Special Representative is concerned that the amnesty should be enforceable by law.

22. In another welcome development in southern Serbia, the government announced that the long-anticipated early municipal elections in Bujanovac, Presevo and Medvedja would be held on 15 or 16 June 2002.

23. The number of complaints of human rights violations or aggressive or provocative behaviour by the security forces has fallen since December and no serious allegations of ill-treatment have been received since October. However, there are concerns that complaints are not being communicated effectively by the ethnic Albanian community to the authorities and that, when they are delivered, the response is inadequate and slow. For example, complaints were promptly submitted concerning the beating of three ethnic Albanians searching for cattle

near Strezovce in October; a response was not, however, received until February. The authorities acknowledged the ill-treatment in their response, but reported that disciplinary measures and not criminal charges had been brought against the officers involved.

24. It is also a matter of deep concern that the second anniversary of the "disappearance" of Nebi Nuhiu passed without identification of his fate or whereabouts. Nebi Nuhiu, the owner of a fuel station in Presevo, was abducted on 2 February 2000. His family claims to be able to identify at least six police officers involved in his "disappearance", but the authorities have so far brought charges against only three officers. The charges against them relate to the extortion of money and not to abduction.

25. The Special Representative is concerned also by the lack of apparent progress in investigating the mass grave sites at Batjanica, on the outskirts of Belgrade. Despite the fact that 306 bodies have been exhumed to date, no real progress has been made in identifying the remains nor in investigating and prosecuting those criminally responsible for these acts.

Kosovo

26. The Special Representative notes two recent important political developments in Kosovo - the new Special Representative of the Secretary-General, Michael Steiner, took up his duties as head of the United Nations Interim Administration for Kosovo (UNMIK) on 14 February 2002, and the major Kosovo political parties formed a coalition government on 4 March 2002, electing a president and prime minister three months after province-wide elections for the first Kosovo parliament. The Special Representative welcomes these positive developments and urges the new international and local leaders to integrate human rights fully into UNMIK activities and the work of the new governing institutions. He repeats his concern that the post of Senior Human Rights Advisor to the Special Representative has remained unfilled since February 2000 and calls for closer working arrangements between UNMIK and the Office of the High Commissioner for Human Rights.

27. Three former members of the now-disbanded Kosovo Liberation Army were arrested just prior to the Special Representative's visit on allegations that they had committed serious crimes against Kosovo Albanians during the war. The arrests, the first of Kosovo Albanians accused of war crimes, sent the important message to all residents of Kosovo that no one will have impunity for the commission of war crimes, crimes against humanity or other violations of international human rights standards. During the visit, organized street demonstrations protesting the arrests turned violent. The international community took the unusual step of endorsing the arrests by way of a press statement, which was widely reported in the local media. UNMIK subsequently imposed a system of controls and restrictions on demonstrations by way of a "public announcement" on "applicable procedures for public gatherings". The announcement does not indicate the legal basis for the new rules. While recognizing the right of UNMIK to impose reasonable conditions on demonstrations for purposes of public safety, the Special Representative urges UNMIK to clarify the legal basis for these procedures and to ensure that the measures adopted are strictly required by the exigencies of the situation.

28. Three incidents of political and ethnic violence in early 2002 highlighted continuing security concerns in Kosovo, particularly the safety of minorities. Mr. Ismael Hajdaraj, a

member of the Kosovo Assembly from the Democratic League of Kosovo (LDK), was gunned down in front of his home, and two Serbs, one a 57-year-old woman, were killed in apparently ethnic-related attacks.

29. Since the visit of the Special Representative, the funding situation of the Housing and Property Directorate (HPD) and its related agency, the Property Claims Commission, has become acute. There is an urgent need to begin to resolve property issues, particularly those relating to the occupation of houses, flats and other forms of accommodation. The laws relating to property are not clear, nor well known; occupations of property have occurred through intimidation, threats and violence by persons having no right to the properties in question; the institutions charged with resolving property issues, including the civil courts, are all under-funded and ill-equipped to discharge their respective mandates. The Special Representative believes that priority should be given to funding these institutions and that the applicable laws should be clarified and widely disseminated both in Kosovo and in Serbia, and should include an update to the existing compendium of laws prepared by HPD.

Montenegro

30. Intensive negotiations on the relationship between Montenegro and Serbia continued through February 2002 with the active participation of the European Union. No resolution has been reached in spite of the intensified discussions, though a move away from holding a referendum in the spring of 2002 appears to have taken place. The Special Representative notes with concern that the deep political polarization within Montenegro remains and tensions fuelled several violent clashes during the Orthodox holidays in January 2002.

31. In this context, the Special Representative remains concerned about slow progress in and the process for drafting and promulgating key legislative reforms. While individual laws on courts and employment have been adopted, legislation governing a national human rights institution, local self-government, the police, labour, a criminal code and the media are still pending. On a positive note, the Ministry of Justice of the Republic of Montenegro is preparing to institute a national Ombudsman's office for Montenegro. In this context, the Special Representative welcomes the Government of Montenegro's efforts to prepare and adopt legislation to create a national Ombudsman and, in particular, its intention to hold general public consultations, including with OHCHR, the Council of Europe and OSCE on this subject.

32. The Special Representative commends the planned abolition of the death penalty and the inclusion of detailed regulations governing the crime of trafficking of human beings in the draft amendments to the Criminal Code of Montenegro. A second version of the draft is pending a final vote for adoption in Parliament.

33. The Special Representative reiterates his concern over the lack of implementation of the Government's plans for national minorities, in particular in the areas of education and proportional representation in public administration. For instance, while the ethnic Albanian population has primary and secondary Albanian language schools, there is no provision for a special curriculum in accordance with article 71 of the Constitution of Montenegro. He recognizes the step forward represented by the appointment of an ethnic Albanian Chief of

Police in the municipality of Ulcinj, where the ethnic Albanian population constitutes approximately 85 per cent of the total population, and calls on the authorities to follow through on such practices in other areas of Montenegro.

34. The Special Representative notes with concern that the draft amendments to the Criminal Code of Montenegro have not dealt effectively with the existing custodial penalties for slander and defamation. He recognizes that draft amendments cancel the special criminal law protection given to public figures in article 82. Nonetheless, the special criminal protection of symbols remains, as well as the possibility of criminal prosecution by private action.

35. The Special Representative continues to note with concern the absence of public or parliamentary supervision of the police. In the past seven months, nine cases of various forms of police abuse have been alleged and are in the process of investigation in a number of municipalities. The Special Representative notes that there are a similar number of cases in which victims have dropped charges, allegedly owing to pressure exerted by the police and other public officials. The most recent case was the arrest in Bijelo Polje on New Year's Day of a young man who was allegedly severely beaten while in detention and had no access to medical attention. The Public Prosecutor has pressed charges against the police officers concerned for abuse of power by public officials.

36. Finally, the Special Representative recognizes that the unresolved political status of the two republics within the federal structure is an impediment to key institutional reforms, but believes, nonetheless, that practical progress can be made in meeting the Federal State's obligations to provide reports on its implementation of the six human rights treaties to which it is a party. He urges the three entities to collaborate closely in order to submit the outstanding reports as soon as possible.

Notes

[1] Source: Statistics on the implementation of the property laws in Bosnia and Herzegovina, published jointly by the Office of the United Nations High Commissioner for Refugees, Office of the High Representative, the Organization for Security and Cooperation in Europe, the United Nations Mission in Bosnia and Herzegovina, and the Commission for Real Property Claims of Displaced Persons and Refugees, 31 December 2001.

[2] Idem.

[3] Source: International Commission on Missing Persons, General Fact Sheet.